



**GENERAL CONDITIONS  
FOR CONSTRUCTION CONTRACT**

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## **ARTICLE G-01**

### **ABBREVIATIONS AND DEFINITIONS OF TERMS**

#### **G-01.01     ABBREVIATIONS**

Abbreviations may be utilized throughout the Contract Documents. Any such abbreviation, unless commonly understood in the local construction industry, will be defined in the particular portion of the Contract Documents where it is used.

#### **G-01.02     DEFINITIONS**

Whenever in the Contract Documents or Bidding Requirements the following words and defined terms are used, the meaning shall be applicable to both the singular and plural forms thereof:

**Addendum:** A written or graphic document issued by the Port prior to the Bid Opening Date that clarifies, corrects, or changes a document contained or referenced within the Contract Documents.

**Allowance:** An amount established in the Contract Documents for inclusion in the Contract Sum to cover Work which may or may not be carried out by the Contractor and which cannot be accurately quantified as of the Bid Opening Date. Any amount included in the Contract Sum but not authorized for expenditure in the course of performing the Work shall be deducted from the Contract Sum by way of a reconciling Change Order.

**Agreement Form:** The written form executed by the Port and the Contractor that binds the Contractor to perform the Work in accordance with the Contract Documents.

**As-Built Drawings:** A neatly and legibly marked set of Drawings that reflect the manner in which the Work has been performed in the field. The requirements for the As-Built Drawings are separately set forth in the Specifications.

**Assistant Director of Engineering, Construction Services:** The authorized representative of the Engineer that supervises the Construction Manager, Resident Engineer and administration of the Contract after Contract Execution. The Assistant Director of Engineering, Construction Services will be identified by the Port, in writing, subsequent to Contract Execution Date.

**Bid:** The offer of a Bidder, on the prescribed bid form, properly executed, setting forth the price or prices for the Work to be performed.

**Bid Documentation:** Any work papers, spreadsheets, takeoffs, material lists, subcontractor quotes, vendor or material quotes, wage rates, equipment rates (both rented and owned), and any other papers, documents, or electronic information created or used by the Contractor when preparing its Bid. Bid Documentation includes the data files associated with any software program utilized by Contractor when preparing its Bid but does not include the software program itself.

**Bid Opening Date:** The date on which the Port publicly opens the Bids.

**Bidding Requirements:** The Advertisement for Bids contained in Document 00 10 00, the Instructions to Bidders contained in Document 00 20 00, any supplementary instructions to bidders, any supplementary bidder responsibility criteria, and any sample forms that pertain to the Bidding Requirements (all as the same may be revised by Addendum).

**Certificate of Contract Completion:** The document issued by the Port after the retainage has been completely consumed in the payment of claims (including by the Port) or released and

Contractor has satisfied any requirements set forth in the Contract to provide completed operations insurance coverage after Final Acceptance.

**Change Order:** A written document signed and issued by the Port on or after the Contract Execution Date that authorizes and directs an addition, deletion, or revision in the Work, or adjustment in the Contract Time or Contract Sum.

**Claim:** A written demand or assertion by the Contractor in accordance with Article G-09 after denial of a Request for Change Order seeking, as a matter of right, adjustment of Contract terms, payment of money, extension of time or other relief with respect to the terms of the Contract.

**Closeout Administrative Requirements:** Those administrative requirements that are not necessary for Physical Completion but which the Contractor must fulfill in order to complete the Work under the Contract. The Closeout Administrative Requirements include, but are not necessarily limited to, the return of ID Badges and keys, the submission of all required equal employment opportunity and electronic payroll information, the provision of all approved prevailing wage documentation, the resolution of any Claims, the reconciliation of any Allowances, Not-to-Exceed Change Orders, and similar items, the submission of Contractor's Final Payment request, and the delivery of the final contractor's release.

**Construction Manager:** The authorized representative of the Engineer that holds direct responsibility for the administration of Contract. The Construction Manager is usually assisted by one or more Resident Engineers. The Construction Manager will be identified by the Port, in writing, subsequent to Contract Execution Date.

**Contract:** The Contract governs the relationship between the Port and the Contractor concerning the Work. The Contract Documents form the Contract.

**Contract Documents:** The Contract Documents consist of the executed Agreement Form, the Drawings and Specifications, any Change Orders, and any other form or document listed in the Agreement Form as being part of the Contract Documents. The Contract Documents do not include the Bidding Requirements or any version of the Drawings or Specifications that may be deleted, replaced or superseded by Addendum prior to the Bid Opening Date. The Contract Documents also do not include any portion of the Reference Documents unless expressly listed in the Agreement Form.

**Contract Execution Date:** The date the Port officially binds itself to the Contract and thereby triggers the commencement of the Contract Time.

**Contract Sum:** The Contract Sum stated in the Agreement Form, including authorized adjustments thereto, to be paid by the Port to the Contractor for the performance of the Work.

**Contract Time:** The time allotted in the Contract for the Substantial Completion of the Work. The Contract Time begins on the Contract Execution Date and ends on the date of Substantial Completion of the Work by the Contractor.

**Contractor:** The Contractor is the individual, partnership, firm, corporation, joint venture, or other business entity with which the Port of Seattle has entered into the Contract. Unless the context clearly requires otherwise, the term Contractor includes all of the Contractor's authorized representatives. The term Contractor does not include any Subcontractor or Supplier of any tier.

**Critical Path:** Critical Path is the longest, continuous sequence of interrelated activities that begins on the Contract Execution Date and extends to Substantial Completion of the Work. This path represents the longest chain of interrelated activities throughout the network from beginning to end. These activities are critical because delay to an activity on this path will extend Milestones or Contract Time.



**Day:** The term day, regardless of whether capitalized, shall mean a calendar day unless otherwise specifically designated.

**Drawings:** The Drawings are that portion of the Contract Documents that present the Work (or parts thereof) visually, graphically, symbolically or diagrammatically and which generally indicate the size, form, location, and arrangement of the various elements of the Work.

**Engineer:** The Chief Engineer and Director of the Port's Engineering Services Department, Capital Development Division. The Engineer acts for the Port in the administration of the Contract and has overall authority for such administration after Contract Execution Date.

**Event:** Any act, omission, directive, condition, instruction or determination that the Contractor believes may entitle it to an adjustment in the Contract Time or Contract Sum, including (without limitation): (i) directives by the Engineer, (ii) responses to RFIs, issuance of Construction Bulletins, or comments on Submittals, (iii) acceleration, suspension, delay, or stand-by of the Work, (iv) discovery of conflicts, inconsistencies, omissions, or ambiguities in the Contract Documents, (v) unexpected discovery of hazardous, potentially hazardous, infectious, toxic or dangerous materials, (vi) discovery of any item of potential archeological significance, (vii) "differing site conditions," including without limitation unidentified or mis-located utilities, (viii) issuance of a Change Order; (ix) performance of Unit Price work quantities below or above the percentages listed in Paragraph G-05.04.B; (x) rejection of an "Or Equal" request; (xi) failure to issue an authorization for work within the scope of an Allowance, (xii) failure by the Port to cooperate with Contractor to facilitate performance of the Work, and (xiii) any other act or omission by the Port which the Contractor believes may entitle it to additional time or money. An Event is deemed to occur upon the earlier of: (a) the act, omission, directive, condition, instruction, or determination that constitutes the Event or (b) the time the Contractor discovered, or in the exercise of reasonable inquiry, should have discovered the act, omission, directive, condition, instruction or determination that constitutes the Event.

**Final Acceptance:** The Port's formal, written acknowledgment, signed by the Engineer to whom authority to accept Work has been delegated by the Port Commission, reflecting completion and acceptance of the Work. Final Acceptance is required by Section 39.08 of the Revised Code of Washington and commences the time for submission of any third-party claims against performance or payment bonds under Chapters 39.08 and statutory retention under RCW 60.28.

**Final Payment:** The final Progress Payment made to the Contractor. Final Payment is not the payment to the Contractor of the retainage required by RCW 60.28 following satisfaction of the conditions necessary to release that retainage.

**Impact to Unchanged Work:** The disruption to performance of Work that is not changed by a Change Order or Event, including without limitation any reduction in planned efficiency or productivity of the unchanged Work whether through trade stacking, overtime or otherwise.

**Inspector:** A representative of the Engineer that is assigned to make inspections and record the progress of Contractor's performance of the Work. An Inspector may or may not be identified by the Port in writing, but the Resident Engineer or Construction Manager will always confirm the authority of an Inspector on request.

**Milestone:** A specified milestone date in the Contract by which the Contractor is required to complete or attain a designated portion of the Work. A Milestone may, for example, exist with respect to the end of Contract Time, a deadline for Partial Substantial Completion, a deadline for completion of a portion of the Work that would not constitute Substantial Completion or Partial Substantial Completion, or some other specified occurrence (such as issuance of a Notice to Proceed).

**Non-Conforming Work:** Any portion of the Work (including but not limited to material, equipment or workmanship proposed or incorporated into the Work) that does not conform (including as a result of latent defect) to the requirements of the Contract. Non-Conforming Work specifically includes any Substitution that is not expressly accepted by the Port under Paragraph G-04.08.B. Non-Conforming Work also includes Work that generally conforms to the requirements of the Contract but fails within the term of any applicable warranty period.

**Notice of Event:** Written notice by Contractor to the Port of an Event made in accordance with the provisions of Paragraphs G-04.34 and G-05.

**Notice of Intent to Award:** The official notice from the Port that it intends to execute the Contract with the selected responsible, responsive bidder.

**Notice to Proceed:** Written notice issued by the Port that indicates that the Contractor can mobilize on the Project Site and begin all, or a designated part, of the physical construction Work at the Project site.

**Notice of Completion of a Public Works Contract:** The written notice provided by the Port to the Washington State agencies having authority to assert a lien against the retention required by Chapter 60.28 of the Revised Code of Washington by which the Port requests authority to release the retention. The Notice of Completion of Public Works Contract is issued following Final Acceptance.

**Notice Requirements:** The provisions of the Contract that set forth the requirements the Contractor must follow when providing a Notice of Event, making a Claim, or submitting any other notice the Contractor is required to submit to as a condition of obtaining any change in, or relief under, the Contract Documents. Notice Requirements specifically include both temporal and substantive requirements. Notice Requirements are generally set forth in these General Conditions and the Supplementary Conditions (if any) but may also appear in other portions of the Specifications.

**Operating and Maintenance Documentation:** Documentation required by the Specifications that pertains to and specifically describes the requirements for operation and maintenance of various portions of the completed Work. The Operating and Maintenance Documentation may apply to such things as equipment, materials and finishes and may cover such topics as operating instructions, maintenance requirements, and cleaning.

**Or:** When the word "or" is utilized anywhere in the Agreement Form, Bidding Requirements, General Conditions, Supplementary Conditions or Division 1 of the Specifications, the Port specifically intends the logical or inclusive disjunction (i.e. and/or) unless the language or context clearly indicates otherwise. When the word is used in other portions of the Specifications or the Drawings, the meaning must be ascertained from the context.

**Or Equal:** Equal or better function, quality and performance to that specified in the Contract Documents. An item is not Or Equal if it is materially different, with respect to other constraints or requirements in the Contract Documents, in size, weight or other aspect from the item specified in the Contract Documents. Similarly, an item is not Or Equal if it is expected to have significantly higher total cost of ownership over the life of the completed Work.

**Partial Substantial Completion.** The time at which a designated Milestone or part of the Work has progressed to the point where all of the following conditions are met: (a) it is sufficiently complete in accordance with the Contract Documents such that the Port or its tenant has full, unrestricted and permanent occupancy and use of that part of the Work, (b) only minor or incidental physical construction Work (Punchlist) remains to be completed, (c) all systems and parts of the Work are commissioned and functional, (d) utilities are connected and operate

normally, (e) Contractor has provided all occupancy permits and easement releases for that part of the Work so designated, (f) Contractor has submitted, and the Port has accepted (or accepted as noted) draft Operating and Maintenance Documentation, (g) Contractor has submitted, and that Port has accepted (or accepted as noted) draft Warranty Documentation and (h) all training required to be provided by Contractor has been satisfactorily completed.

**Partially Completed Work:** A specific portion of the Work that is not yet Substantially Complete but which portion the Port elects to take early possession or use of as described in Paragraph G-08.08.

**Physical Completion:** The time at which all of the Work has progressed to the point where (a) Contractor has achieved Substantial Completion, (b) the Contractor has completed all items identified on the Punchlist and the Punchlist Backcheck has been completed, (c) the Contractor has submitted and the Port has accepted all required As-Built Drawings, (d) the Contractor has fulfilled its obligations associated with any Contractor maintenance period, (e) the Contractor has submitted final Operating and Maintenance Documentation consistent with the accepted draft, (f) the Contractor has submitted final Warranty Documentation consistent with the accepted draft, and (g) the Contractor has completed closeout cleaning and fully and satisfactorily demobilized from the Project Site and any other Port property provided for use under the Contract. Physical Completion does not require completion of the Closeout Administrative Requirements. It is possible, although highly unlikely, for the Contractor to achieve Physical Completion as to a portion, but less than all, of the Work.

**Physical Completion Date:** The date the Port determines that the Contractor has achieved Physical Completion.

**Port:** The Port of Seattle. Unless the context clearly requires otherwise, the term Port includes all of the Port's authorized representatives. The term Port, however, specifically excludes the Airport Building Department, the Port of Seattle Fire Department, and members of the Aviation Facilities & Infrastructure Group when acting as a utility purveyor at Seattle-Tacoma International Airport.

**Product Data:** The illustrations, standard schedules, performance charts, brochures, diagrams and other information furnished by the Contractor to illustrate a material, product, or system for some portion of the Work.

**Progress Payment:** Periodic payments to the Contractor of the Contract Sum for work completed in accordance with the Contract Documents. Progress Payments are made to the Contractor as otherwise provided in the Contract Documents.

**Project Records:** Project Records shall mean those data and records maintained by Contractor related to the performance of the Work as more particularly set forth in Paragraph G-04.38.

**Project Site:** The location(s) where the Work will be performed or constructed by the Contractor as set forth in the Drawings and Specifications. Project Site specifically includes areas identified by the Port for Contractor's logistics or staging but does not include any areas separately secured by the Contractor, a Subcontractor of any tier, or Supplier for use in connection with the Work (e.g. Contractor's home office, an off-site fabrication plant, etc.).

**Provide:** A verb that, when used in connection with a requirement for the Contractor undertake or perform certain Work, specifically includes all actions necessary to furnish, install, connect, commission, adjust, test, and otherwise make ready for use and occupancy such Work.

**Punchlist:** A list(s) of the physical construction Work that remain to be completed after the achievement of Substantial Completion or Partial Substantial Completion of the Work which must be satisfactorily completed in order to attain Physical Completion. In addition, the Punchlist may

be expanded by the Port for other non-conforming issues as described under Paragraph G-08.06.C.2.

**Punchlist Backcheck:** The backcheck completed by the Engineer used to verify that the items identified on the Punchlist are complete. Upon acceptance of the Punchlist Backcheck by the Engineer, the Punchlist process is complete.

**Punchlist Inspection:** The inspection undertaken by the Engineer after receipt of the Punchlist from the Contractor.

**Reference Documents:** Drawings, specifications, or other documents that do not specify Work required by the Contract Documents, but which provide supplemental information that offers insight into the means, methods, techniques, sequences, or procedures of construction that may be necessary to perform or accomplish the Work and which the Port expects the Contractor to take notice of in preparing its Bid and performing the Work. Reference Documents are not, however, the exclusive source for such information.

**Request for Change Order:** A document, designated as a Request For Change Order, prepared by the Contractor requesting (1) a change in Contract Sum; (2) a change in Contract Time; (3) a change in Contract Work; (4) payment of money or damages; or (5) any other relief arising out of or relating to this Contract.

**Request for Information (RFI):** A document by which the Contractor requests clarification, verification or information on a portion of the Work.

**Resident Engineer:** The authorized representative of the Engineer that is generally located on or near the Project Site and assigned to be the primary point of contact for the Contractor. The Resident Engineer has immediate, day-to-day charge of the on-site engineering and administration of the Project. The Resident Engineer will be identified by the Port, in writing, subsequent to Contract Execution Date.

**Samples:** Physical examples of materials, equipment, systems or workmanship establishing standards by which the Work will be evaluated for acceptance.

**Schedule:** The critical path method schedule prepared by the Contractor in accordance with the requirements of the Contract and accepted by the Engineer setting forth the logical sequence of activities required for the Contractor's orderly performance and completion of the Work in accordance with the Contract and specifically to meet any specified Milestones. The Schedule includes updates – whether by progress schedule(s), recovery schedule(s) or otherwise – required by the Contract.

**Schedule of Prices:** That portion of Contractor's Bid that sets forth the price for which Contractor will perform specific portions of the Work and, in total, the entire Work.

**Software:** Any computer program, computer database or documentation related thereto for which any party claims protection under patent, copyright, trade secret or other proprietary or intellectual property right.

**Specifications:** The Specifications are that portion of the Contract Documents that consist of the written requirements for contract administration, materials, equipment, systems, standards, and workmanship for the Work and for the performance of any related services, and the Specifications include Division 0 (except the Bidding Requirements) through Division 48, which are generally bound together with other documents related to the Contract in one or more volumes commonly referred to collectively as the "Project Manual."

**Subcontractor:** A Subcontractor is a business entity that has a direct contract with the Contractor to perform a portion of the Work. Unless the context clearly requires otherwise, the term Subcontractor includes all of the Subcontractor's authorized representatives.

**Submittal:** Written or graphic document (including electronic) or sample that is required by the Contract Documents and is prepared for the Work by the Contractor, a Subcontractor or Supplier at any tier, and submitted to the Port by the Contractor, including product data, samples, certificates, schedules of material or other data. Submittals are not Contract Documents.

**Substitution:** An item of significant difference in material, equipment, process or configuration that functionally meets the express and implied requirements of the Contract Documents.

**Sub-subcontractor:** A Sub-subcontractor is a business entity that has a direct or indirect contract with a Subcontractor or another Sub-subcontractor to perform a portion of the Work. Unless the context clearly requires otherwise, the term Sub-subcontractor includes all of the Sub-subcontractor's authorized representatives.

**Substantial Completion:** The time at which all of the Work as a whole has progressed to the point where (a) it is sufficiently complete in accordance with the Contract Documents so that the Port or its tenant has full, unrestricted and permanent occupancy and use of that part of the Work, (b) only minor or incidental physical work (Punchlist) remains to be completed, (c) all systems and parts of the Work are commissioned and functional, (d) utilities are connected and operate normally, (e) Contractor has provided all occupancy permits and easement releases for that part of the Work so designated, (f) Contractor has submitted and the Engineer has accepted (or accepted except as noted) draft Operating and Maintenance Documentation, (g) Contractor has submitted and the Engineer has accepted (or accepted except as noted) draft Warranty Documentation, and (h) all training required to be provided by Contractor has been completed.

**Substantially Complete:** An adjective, used with respect to either the Work (or a specific portion thereof), that indicates the Work (or specific portion thereof) has progressed to point where it qualifies for Substantial Completion (or Partial Substantial Completion as to a specific portion).

**Supplementary Conditions:** That portion of the Contract Documents that amends or supplements the General Conditions set forth in this Document 00 70 00.

**Supplier:** An entity that supplies material or equipment used in the performance of the Contract. Unless the context clearly requires otherwise, the term Supplier includes all of the Supplier's authorized representatives.

**Surety:** A surety company that is bound, by the terms of the performance or payment bonds required under the terms of the Contract, to ensure the performance of the Contractor and the Contract.

**Unit Price Work:** Work to be paid for on the basis of unit prices stated in the Schedule of Prices or a Change Order.

**Unusually Severe Weather:** Adverse weather that, at the time of year it occurred, is very unusual for the place in which it occurred. Weather may be unusually severe either as a result of its severity (e.g. exceptionally heavy rain or snow) or the unusual number of days that it persists. Unusually Severe Weather will be judged against the ten-year average values determined from U.S. Department of Commerce, National Oceanic and Atmospheric (NOAA) National Climactic Data Center monthly climatological data for the Seattle, Washington station closest to the Project Site. While the combination of two or more weather conditions outside one standard deviation of the ten-year mean may be considered Unusually Severe Weather, a single weather condition must generally fall outside one and a half standard deviations of the ten-year mean in order to be considered Unusually Severe Weather.

**Warranty Documentation:** Documentation required by the Specifications that pertains to and specifically describes the warranties for the completed Work. The Warranty Documentation shall not include the Contractor's general one-year warranty under GC-04.29 but otherwise extends to all special warranties required anywhere in the Contract Documents. The Warranty Documentation may cover such topics as the length of the warranty, the manner of making a claim, and any accepted conditions on such warranty.

**Warranty Start Date:** The date that a particular warranty to be provided by Contractor commences to run. Different warranties may have different Warranty Start Dates. The Warranty Start Date for any particular warranty will occur on the later of: (1) the Contractor's attainment of Substantial Completion or Partial Substantial Completion of the Work to which the warranty applies, (2) fifteen (15) days following the date on which the Contractor submits draft Operating and Maintenance Manuals that are accepted (or accepted subject to minor revision as noted) for the particular portion of the Work to which the warranty applies, (3) the date the Contractor successfully completes all of the training required by the Contract for the particular portion of the Work to which the warranty applies, and (4) fifteen (15) days following the date on which the Contractor submits draft Warranty Documentation that is accepted (or accepted subject to minor revision as noted) for the particular portion of the Work to which the warranty applies.

**Work:** Work shall mean the construction to be completed under the terms of this Contract. The Work is summarized in Section 01 11 00 of the Specifications and detailed more fully in the remainder of the Specifications and Drawings. Work specifically includes the furnishing of all labor, materials, equipment, and all incidentals necessary to the successful completion of the construction, whether they are temporary or permanent, and whether they are incorporated into the finished Work or not. Work also includes all other obligations imposed on the Contractor by the Contract. The Work is sometimes generally referred to as the "Project."

**Working Drawings:** Shop drawings, erection plans, false work plans, framework plans, cofferdam plans, stress diagrams, bending diagrams for reinforcing steel, or other diagrams, plans, or data used to illustrate some portion of the Work that the Contractor is required to submit to the Engineer.

### **G-01.03      TITLES OR HEADINGS**

The titles or headings of the sections, divisions, parts, articles, paragraphs, or subparagraphs, of the Contract Documents are intended only for convenience of reference and shall not be considered as having any bearing on the interpretation of the text.

### **G-01.04      STANDARD ABBREVIATIONS AND MEANINGS**

Unless otherwise defined in the Contract Documents, words and abbreviations that have well-known technical or trade meanings are used in accordance with such recognized meanings.

## **ARTICLE G-02** **INTENT, CORRELATION AND EXECUTION OF CONTRACT**

### **G-02.01      INTENT OF THE CONTRACT DOCUMENTS**

- A.** The intent of the Contract Documents is to prescribe the complete Work. The Contractor shall furnish all labor, materials, equipment and incidentals necessary to complete all parts of the Work. Where the Contractor is directed to provide something as part of the Work, that term specifically includes everything necessary to furnish, install, connect,

adjust, test and make ready for use or occupancy. Compensation for the cost of the complete Work and for full performance of the Contract is included in the Contract Sum.

- B.** The Contract shall be construed in accordance with the laws of the State of Washington. Venue for any action between the Port and the Contractor arising out of or in connection with this Contract shall be in King County, Washington.
- C.** The Contract represents the entire and integrated agreement between the Port and the Contractor. It supersedes all prior discussions, negotiations, representations or agreements pertaining to the Work, whether written or oral.

#### **G-02.02 CORRELATION OF THE CONTRACT DOCUMENTS**

- A.** Each Contract Document is an essential part of the Contract between the Port and the Contractor, and a requirement present in one Contract Document is binding as though it was present in all. The Contract Documents are intended to be complementary and prescribe and provide for all Work required by the Contract. Work, materials or equipment that have not been specifically included in the Contract Documents but which are required to produce the intended result shall be provided by the Contractor as though they had been specifically included.
- B.** Work required by the Contract Documents but for which a specific line item is not provided in the Schedule of Prices shall nevertheless be considered as a part of the Work and all costs of the same are included in the Contract Sum.
- C.** The Contract Documents are listed below in order of precedence. Contract Documents amended or revised by Addendum retain the same order of precedence. To the extent that there are different provisions in Contract Documents that address the same matter or subject, these provisions shall be reconciled and harmonized to the maximum extent possible. In the event these different provisions cannot be reconciled, the provisions set forth in the Contract Document having the highest precedence will control. If provisions within the same level of Contract Document cannot be reconciled, and one is more stringent than another, the more stringent provision will prevail.
  - 1. Change Orders.
  - 2. Agreement Form.
  - 3. Supplementary Conditions.
  - 4. General Conditions set forth in this Document 00 70 00.
  - 5. Other Division 00 Conditions of the Contract Documents.
  - 6. All other Specifications.
  - 7. Drawings.
  - 8. Other documents included in the Contract by the terms of the Agreement Form.
- D.** In case of differences between small-scale and large-scale drawings, the large-scale drawings shall govern. In the event of discrepancy between any Drawing and the figures written thereon, the figures, unless otherwise indicated, shall govern over scaled dimensions.
- E.** In the event of a conflict between the Contract Documents and applicable laws, codes, ordinances, regulations or orders of governmental authorities having jurisdiction over the Work or any portion thereof, or in the event of any conflict between such applicable laws, codes, ordinances, regulations, or orders, the most stringent requirements of any of the above shall govern.

**G-02.03 EXECUTION OF THE AGREEMENT FORM**

The Contract is not binding upon the Port until the Contract Execution Date. No bidder shall have a right, interest or claim with respect to the Contract or the Work until the Contract Execution Date. After being executed by the Port, the Contractor will receive a copy of the Agreement Form. Work performed prior to the Contract Execution Date is at the sole risk of the Contractor.

**G-02.04 OWNERSHIP OF THE CONTRACT DOCUMENTS**

The Contract Documents furnished to the Contractor shall remain Port property. The Contract Documents furnished to the Contractor are for use solely with respect to this Project and are not to be used by Contractor, Subcontractors, Sub-subcontractors, or Suppliers on other projects without the prior specific written consent of the Port. Neither the Contractor nor any Subcontractors, Sub-subcontractors, or Suppliers shall own or claim a copyright in the Contractor Documents. All Documents submitted to the Port and not returned to the Contractor shall be retained by the Port, including Software and source codes developed or used for the Project. See Paragraph G-04.37.

**G-02.05 NO WARRANTIES BY THE PORT**

- A.** Any "bid quantities" set forth in the Schedule of Prices are estimates only, having been provided only as a basis for the comparison of Bids by the Port. The Port provides no representations or warranties, expressed or implied, that the actual amount of Work will correspond to those estimates. Furthermore, the bid quantity estimates are not indications or representations that may give rise to any differing site condition claim. The sole and exclusive remedy for any variation in bid quantities is as described in Paragraph G-05.04.B.
- B.** The Reference Documents and any other information, records, or reports that may be made available by the Port to the Contractor are provided solely for the convenience of the Contractor. While the Port considers the Reference Documents to be reasonably reliable when considered in context (specifically including the lapse of time and any subsequent activity) and expects the Contractor to reasonably make use of them when preparing its Bid and performing the Work, the Port make no representations or warranties, express or implied, regarding the content of the Reference Documents or any other information, records, or reports. No information derived from inspection of Reference Documents or other information, records, or reports will in any way relieve the Contractor from its responsibility for properly performing its obligations under the Contract. The Contractor shall make its own conclusions and interpretations from the data supplied, information available from other sources, and the Contractor's own observations.

**G-02.06 PARTNERING**

- A.** The Port is committed to the principles of project partnering, which includes collaboration and cooperation to identify and engage in measures to prevent and resolve potential sources of conflict before they escalate into Claims or legal actions. The Port and Contractor shall, as they work together on this Project, adhere to this partnering concept.
- B.** To the extent request by either party, the Port and Contractor will participate in a partnering session promptly as soon as practicable following the Contract Execution Date or, if the parties are having difficulty in connection with the administration of the Contract and management of Requests for Changes and/or Claims, at that time. The purpose of the workshop(s) shall be:



1. To establish mutual understanding of partnering concepts;
2. To develop the mission statement and goals for the Project for all parties;
3. To develop a process so that critical issues can be quickly resolved;
4. To review Port processes such as billing procedures, substantiation requirements and audit process; and
5. For meetings later in the Project, to discuss issues related to potential conflicts and to engage in collaborative problem solving.

The Port will provide facilities for any partnering session. The cost for any outside consultant to lead the partnering session(s) will be subject to reimbursement by the Port; otherwise, each party shall bear its own costs in connection with its participation in any such partnering session.

- C.** Contractor shall including language from this Paragraph in contracts for Subcontractors who become involved in the performance of the Work.

## **ARTICLE G-03**

### **PORT OF SEATTLE**

#### **G-03.01 AUTHORITY OF THE ENGINEER**

- A.** Subject to the limits of authority established by the Port of Seattle Port Commission, the Engineer is the Port's representative for this Contract, will administer the Contract, and has the authority to enforce all obligations imposed on the Contractor by the Contract Documents.
- B.** The Work shall be done to the reasonable satisfaction of the Engineer. The Engineer specifically has the authority to reject Non-Conforming Work; however, the failure of the Engineer to do so shall not constitute approval or acceptance of any Non-Conforming Work. The fact that the Engineer was present during the progress of the Work or inspected any portion of the Work does not relieve the Contractor from responsibility for Non-Conforming Work nor does it bind the Port in determining whether to grant Final Acceptance of the Work.
- C.** The Engineer is not responsible for, or will not have any control over, the acts or omissions of the Contractor, Subcontractors, Sub-subcontractors, Suppliers, or any of their agents or employees, or any other persons performing a portion of the Work. The Engineer is not responsible for, and will not have any control over, the means, methods, techniques, sequences, or procedures of construction, or for safety precautions or programs incidental thereto. Nothing in this Paragraph or elsewhere in the Contract Documents shall be construed as requiring the Engineer to assume such responsibility or control or to direct or advise the Contractor in any such regard. Any advice nonetheless given by the Engineer will not relieve the Contractor of its obligations under the Contract and shall not constitute a representation or warranty by the Port that the advice, if followed, will conform to the Contract Documents or achieve the desired results.
- D.** The Assistant Director of Engineering, Construction Services, the Construction Manager, and the Resident Engineer are all authorized to act on behalf of the Engineer. The Engineer may also employ Inspectors or consultants to assist in the administration and management of the contract. While any such Inspectors or consultants may make

recommendations to the Engineer, they are not authorized to approve or accept Work, to suspend the work, or to change the Contract Documents.

**G-03.02 OFFICERS AND EMPLOYEES OF THE PORT HAVE NO PERSONAL LIABILITY**

Neither the Port Commission, Engineer, Assistant Director of Engineering-Construction Services, Construction Manager, Resident Engineer, Inspector, nor any other officer, employee or agent of the Port, acting within the scope of their employment, shall be personally liable for any of their acts or omissions in connection with this Contract, it being understood that in such matters they are acting solely as agents of the Port.

**G-03.03 INFORMATION PROVIDED BY THE PORT**

Upon request, the Port will furnish the Contractor prior to the Notice to Proceed, without charge, up to 5 hardcopy full size sets of Drawings and Specifications.

**G-03.04 PORT'S RIGHT TO CARRY OUT OTHER WORK**

The Port reserves the right at all times to perform or cause to be performed other and additional work on or near the Project Site, whether with its own forces or those of other contractors. This specifically includes work related to, or for other portions of, the Project. Other government agencies may also be performing other work in the vicinity of or relating to this Contract such as inspections, utility maintenance / relocation / construction, road maintenance/construction and other activities. Private developers or businesses may be engaged in activities in the vicinity of, or relating to, this Contract. The Port will cooperate with the Contractor, other agencies, and other contractors or developers in scheduling and coordinating the Contractor's Work with the work of others in order to minimize conflicts, avoid interruptions or delays to others and promote the orderly completion of the Work as a whole.

**G-03.05 SERVICE OF NOTICES BY OR ON THE CONTRACTOR**

Any written notice required under the Contract to be given by or to the Contractor may, at the option of either party, be served on or by the Contractor by electronic means via the Port's Construction Document Management System, personal service, certified or registered mail, or recognized overnight courier. Delivery of the notice will be made to the last address provided in writing to the Engineer or the Contractor. Notices shall be deemed delivered: (i) when sent through the Port's Construction Document Management System, (ii) when personally delivered; (iii) on the third day after mailing when sent by certified or registered mail and the postmark affixed by the United States Postal Service shall be conclusive evidence of the date of mailing; or (iv) on the first business day after deposit with a recognized overnight courier if deposited in time to permit overnight delivery by such courier as determined by its posted cutoff times for receipt of items for overnight delivery to the recipient. Unless specifically provided otherwise in the Contract, service of notice by email is not allowed or recognized.

## **ARTICLE G-04**

### **CONTRACTOR'S RESPONSIBILITIES**

#### **G-04.01 EXAMINATION OF THE SITE OF WORK AND CONTRACT DOCUMENTS**

- A.** By executing the Agreement Form, the Contractor represents that it has carefully examined and investigated the Contract Documents, Project Site, and any other areas necessary to complete the Work. The Contractor likewise represents that it has reasonably reviewed the Reference Documents and any other information necessary for an understanding of, and to successfully complete, the Work. The submission of its Bid shall be conclusive evidence that the Contractor represents and acknowledges that it has made such examinations and investigations and is satisfied as to the conditions to be encountered in the performance of the Work, including the character, quantity, quality and scope of the Work, the quantities and qualities of materials to be supplied, the character of the site, and equipment and labor to be used, the requirements of all documents contained or referenced in the Contract Documents and how all such requirements correlate to the conditions at the site(s) of the Work.
- B.** In the event that the Contractor discovers any error, inconsistency, omission, or variance in the Contract Documents, whether arising from applicable laws, statutes, codes, ordinances, regulations, or otherwise, the Contractor shall provide timely notice thereof in accordance with Paragraphs G-04.34 and G-05.02. The Contractor shall likewise make all reasonable efforts to mitigate any impact resulting from such error, inconsistency, omission or variance. If the Contractor proceeds with the Work and fails to provide timely notice of the error, inconsistency, omission, or variance, the Contractor shall assume full responsibility therefore and shall bear all costs, liabilities and damages attributable to such error, inconsistency, omission, or variance.
- C.** If any part of the Contractor's Work depends on existing conditions or the proper execution of work by others, the Contractor shall report to the Engineer anything that renders such conditions or work unsuitable for the Contractor's Work. Such report shall be in writing and shall be submitted within thirty (30) days of being granted access to the area or the completion of the work by others and, in any event, before using such conditions or work. Failure of the Contractor to report such problems shall constitute an acceptance of the conditions or work by others as fit and proper for the execution of the Contractor's Work and shall preclude any claim for additional compensation or schedule extension unless arising from conditions not reasonably discernible or latent defects in the work by others.

#### **G-04.02 USE OF PROJECT SITE NOT EXCLUSIVE; INTERFERENCE AND DAMAGE**

- A.** Unless specifically identified otherwise, the Contractor may not have exclusive access to or use of the Project Site or other work areas. Unless the Contractor has exclusive access to a work area, the Contractor may be required to use facilities and areas, including the Project Site, concurrently with others, including the Port, other agencies, utilities, other contractors, developers, and tenants. The Contractor will cooperate with the Port and others that may be present on or about the Project Site in scheduling and coordinating the Contractor's Work with the work of others in order to minimize conflicts, avoid interruptions or delays to others and promote the orderly completion of the Work and other work as a

whole. The Contractor shall make any necessary revisions to the Schedule to accommodate this cooperation and coordination.

**B. Damage.**

1. If the Contractor wrongfully causes damage to the property of the Port or to other work of the Port on or about the Project Site, the Contractor shall promptly remedy and be wholly responsible for such damage.
2. In the event there is more than one contractor engaged in work of the Port on or about the Project Site, each such contractor shall be responsible to the other for damages to the work of the other contractor, injury to any person, or other recognized property damage. Likewise, any loss, cost, expense or damage arising from non-conforming work shall be borne by the contractor responsible for that work.
3. If the Contractor wrongfully causes damage to the work or property of any other agency, utility, developer, or tenant, the Contractor shall promptly attempt to settle with such other party by agreement or otherwise resolve the dispute at law. If such other party sues or initiates a proceeding against the Port on account of any damage alleged to have been caused by the Contractor, the Port will notify the Contractor who shall defend such proceedings at its own expense, and if any judgment or award is entered against the Port, the Contractor shall pay or satisfy it and shall reimburse the Port for all attorney's fees and costs that the Port incurs.
4. If any other agency, utility, developer, or tenant causes damage to the Work, the Contractor shall promptly attempt to settle with such other party by agreement or otherwise resolve the dispute at law.

**C. Delay.**

1. The Contractor shall be responsible to the Port for loss to other contractors caused by the Contractor's delays and for failure to finish the Work or any portion thereof within the time specified in a Milestone.
2. If Contractor has knowledge or believes that others working on or about the Project Site is delaying or threatening to delay timely performance of the Work, Contractor shall provide the Port notice, whether oral or written, within 24 hours to permit the Port to mitigate any delay. If the Contractor is nonetheless unreasonably delayed by others, written notification shall be made in writing to the Engineer in accordance with Paragraphs G-04.34 and G-05.02. Any request for a time extension or additional compensation allegedly resulting from such delay shall be made in accordance with the procedures of Paragraph G-05.02. The Contractor shall mitigate and minimize any such delay to its Work caused by others.

**D. Coordination.**

1. The Contractor shall afford the Port and separate contractors' reasonable opportunity for the introduction and storage of their materials and equipment and the execution of their work, and shall connect and coordinate its Work with theirs as required by the Contract Documents.
2. Whenever the Contractor receives items from a separate contractor or from the Port for storage, erection or installation, the Contractor receiving such items shall give receipt for items delivered, and thereafter will be held responsible for care, storage and any necessary replacing of item or items received.

3. When certain items of equipment and other work are indicated as Not In Contract (or "NIC") or to be furnished and installed under other contracts, the Port will provide any requirements for preparation of openings, provision of backing, etc., for receipt of such "NIC" work the Contractor shall properly form and otherwise prepare its work in a satisfactory manner to receive such "NIC" work.

#### **G-04.03 SUPERVISION AND CONSTRUCTION PROCEDURES**

- A. The Contractor shall supervise and direct the Work using its best efforts, skills and attention. The Contractor shall be solely responsible for, and shall have full control and charge of construction means, methods, techniques, sequences and procedures, and for coordinating all portions of the Work under the Contract, including the work of Subcontractors, Sub-subcontractors, Suppliers and all other persons performing a portion of the work. The Contractor shall not be relieved from its obligation to perform the Work in accordance with the Contract Documents either by the activities of the Engineer or by reason of inspections, tests, or approvals required or performed by or for the Engineer. The Contractor is for all purposes an independent contractor and not an agent or employee of the Port.
- B. The Contractor shall be fully responsible to the Port for the acts or omissions of its employees, agents, Subcontractors, Sub-subcontractors, Suppliers and their agents and employees, and all other persons who are to perform any of the Work.
- C. The Contractor shall keep a competent Project Manager or Superintendent at the site of the Work continuously during its progress. The Project Manager and Superintendent shall be experienced, capable of understanding and familiar with the Work and able to properly supervise performance of the Work. The Project Manager or Superintendent shall be the Contractor's representative and shall have authority to act on behalf of and bind the Contractor with respect to this Contract, except that the Contractor may indicate, in writing, limits on the authority of the Project Manager or Superintendent. Communications or notices directed or given to the Project Manager or Superintendent shall be as binding as if given to the Contractor. The Port may require the Contractor to remove the Project Manager, Superintendent, or any other employee from the Site in the event such person fails to uphold or meet the requirements of the Contract, including without limitation, compliance with non-discrimination laws and regulations, or fails to perform in a competent, qualified, safe or professional manner. Incompetent, careless, or negligent workers shall be immediately removed from the performance of the Work by the Contractor upon written request of the Engineer. Failure by the Port to require the Contractor to remove any personnel shall not relieve the Contractor of its Contract obligations.

#### **G-04.04 PERFORMANCE SPECIFICATIONS**

- A. The Contract Documents may describe portions of the Work using performance specifications (as opposed to a prescriptive or design specifications). When the Port utilizes a performance specification, it describes the Work by setting forth the end result required rather than precisely how the Work is to be accomplished. Performance specifications set forth the required attributes of the Work rather than the specific component materials, equipment, and processes, their arrangement, or method of assembly of the Work. Where performance specifications are utilized, the Contractor is responsible, within the Contract Sum and Contract Time, for determining precisely how the Work is to be accomplished (including, but not limited to, the component materials,

equipment, and processes, their arrangement, and method of assembly) to meet the end result required. The method for testing and evaluating Work described by performance specifications will be set forth, and may include (but is not limited to) code requirements, applicable standards, and life-cycle considerations.

- B.** Performance specifications may also list certain materials, equipment, or processes (including by proprietary name, model number, etc.) as examples that might be utilized by the Contractor or might achieve the desired result. It is not the intent of the Port to exclude other materials, equipment, or processes by such listing unless the performance specification indicates that the particular material, equipment, process must be utilized in achieving the end result required and that no substitutions will be permitted. Otherwise, the listing of any such example shall not be considered a warranty by the Port that the particular materials, equipment, or processes will achieve the desired result. Nor will such listing convert a performance specification requiring a particular end result into a prescriptive or design specification.
- C.** Notwithstanding the foregoing, in the event a performance specification indicates that a particular material, equipment, or process must be utilized when achieving the end result required, the Contractor may reasonably rely on the accuracy and suitability of such material, equipment, or process in accomplishing the end result required. In the event the Contractor believes that the particular material, equipment, or process is not suitable, the Contractor shall provide timely notice thereof in accordance with Paragraphs G-04.34 and G-05.02 and make all reasonable efforts to mitigate any impact resulting from the unsuitability. If the Contractor nonetheless proceeds with the Work, the Contractor shall assume full responsibility therefore and shall bear all costs, liabilities and damages associated with such unsuitability.

#### **G-04.05 CONTRACTOR TO PROVIDE ALL LABOR, MATERIALS AND EQUIPMENT**

Unless specified otherwise in the Contract Documents, the Contractor shall include in its Bid and shall provide and pay for all labor, materials, equipment, tools, construction equipment and machinery, water, heat, utilities, taxes (other than sales taxes separately payable by Port), tariffs, transportation and other facilities and services necessary for the proper execution of the Work to completion, whether the same are temporary or permanent and whether or not incorporated or to be incorporated into the Work.

#### **G-04.06 PREVAILING WAGE RATES TO BE PAID**

- A.** The wage rates to be paid all laborers, workers and mechanics who perform any part of this Contract shall meet or exceed the prevailing wage rates as required by Chapter 39.12 of the Revised Code of Washington, as amended. This requirement applies to laborers, workers and mechanics whether they are employed by the Contractor, Subcontractors, Sub-subcontractors, or any other person who performs a portion of the work contemplated by this Contract.
- B.** The current prevailing wage rates as provided to the Port by the Industrial Statistician of the Washington State Department of Labor and Industries are included and incorporated in the Contract Documents. In referencing such rates, the Port does not imply or warrant that the Contractor will find labor available at those rates. It is the Contractor's sole responsibility to determine the wage rates it will actually have to pay.
- C.** In case any dispute arises as to what are the prevailing rates of wages for work of a similar nature and such dispute cannot be adjusted by the parties in interest, including

labor and management representatives, the matter shall be referred for arbitration to the Director of the Department of Labor and Industries of the State and the Director's decision therein shall be final and conclusive and binding on all parties involved in the dispute, as provided for by Section 39.12.060 of the Revised Code of Washington, as amended.

- D.** In connection with this Contract, the Contractor will be required, pursuant to Section 39.12.040 of the Revised Code of Washington to file with the Port a "Statement of Intent to Pay Prevailing Wages" and an "Affidavit of Wages Paid" for itself and all Subcontractors and Sub-subcontractors. The Statements require the "approval" of, and the Affidavits the "certification" of, the industrial statistician of the State Department of Labor and Industries before the Statements or Affidavits are to be presented to the Port. The Department of Labor and Industries charges a fee for such approval and certification, which fee shall be paid by the Contractor. Any change in the fee will not be grounds for revision in Contract Sum.
- E.** On work funded in whole or in part by Federal monies current Federal wage determination rates are included in the Contract Documents. If a State of Washington minimum wage rate conflicts with a Federal minimum wage rate for the same labor classification, the higher of the two shall govern.
- F.** All workers delivering fill, sand, gravel, crushed rock, transit/concrete mix, asphalt or other similar materials and all workers removing any materials from the construction site as required by the specifications are subject to the provisions of RCW chapter 39.12 and are entitled to the appropriate Prevailing Wage Rate. For purposes of this contract, such materials are for specified future use and per WAC 296-127-018, delivery and pick-up of the above listed materials constitutes incorporation.
- G.** The Contractor is required to include this provision in all sub-contracts and shall require that it be placed in all sub-sub contracts at any tier.

#### **G-04.07 MATERIALS AND EQUIPMENT TO BE NEW**

All materials and equipment required to be incorporated into the Work shall be new, except as otherwise provided in the Contract Documents. All such materials and equipment shall be applied, installed, connected, erected, used, cleaned, maintained and conditioned in accordance with the instructions of the applicable manufacturer, fabricator or processor, except as otherwise provided in the Contract Documents. Upon the request of the Engineer, the Contractor shall furnish satisfactory evidence as to the kind, quality and manufacturer of materials and equipment.

#### **G-04.08 OR EQUAL/SUBSTITUTIONS**

- A.** Or Equal. When material or equipment is specified by one or more patents, brand names, or catalog numbers, it shall, unless otherwise expressly stated, be understood as if followed by the words Or Equal whether or not such words appear. If the Contractor proposes to furnish an Or Equal material or equipment, then Contractor shall demonstrate (1) conformance to the specified performance, testing, quality, life-cycle or dimensional requirements and (2) suitability of the material or equipment for the use intended. Intended use of any Or Equal material or equipment shall be specifically identified as part of the submittal process, and the Engineer must accept the Contractor's proposed Or Equal material or equipment before it may be used. Any such acceptance shall not relieve Contractor of its obligations to achieve the specified performance, testing, quality, life-cycle or dimensional requirements and suitability of any accepted the Or Equal material or equipment for the use intended under this Contract.

- B.** Substitutions. Requests for Substitution shall be made in accordance with the Contract Documents.
1. Substitutions will be considered after Contract Execution Date, unless otherwise expressly stated. The Port will consider Substitution requests only from the Contractor and not from Suppliers, distributors, manufacturers, or Subcontractors. If the offered Substitution necessitates reconfiguration, design changes, layout or performance changes or coordination with other portions of the Work, the Contractor, as a condition of the Port's acceptance of the Substitution, shall perform such reconfiguration, redesign and changes or coordination at no additional cost to the Port. Substitutions shall be submitted to the Port in sufficient time to avoid delays to the Work. The Contractor shall be responsible for any delay or cost resulting from untimely submittal of Substitution requests.
  2. The Contractor has the burden of demonstrating that the proposed Substitution's function, quality, operation and maintenance requirements, and performance will function consistently with the specified item and otherwise fully meet the intent of the Contract Documents.
  3. A request for Substitution constitutes a representation that the Contractor:
    - a. Has investigated the proposed product and determined that it meets or exceeds the functional level of the specified product;
    - b. Will coordinate installation and make changes to other Work that may be required for the Work to be complete with no additional cost to the Port;
    - c. Waives claims for additional costs or time extension that may subsequently become apparent; and
    - d. Bears all costs of any redesign or modification to other systems, parts, equipment or components of the Work resulting from the substitution. The Port shall have the right to insist that the Contractor undertake such redesign or modification as a condition of approving the Substitution.
  4. Substitutions will not be considered when they are indicated or implied on Shop Drawings or product data submittals without a separate written Substitution request. Substitutions will not be considered when they are due to the Contractor's failure to order the specified items in a timely manner.
  5. The Engineer, in his/her sole discretion, shall determine whether to accept or reject the offered Substitution and the changes to other portions of the Work necessitated by the incorporation of the offered substitution. In the event that a substituted item is expected to realize substantial cost savings over the indicated item, the Port shall have the right to share in the cost savings (but in no event more than it would be entitled in the event of a Value Engineering Cost Proposal). Denial of a request for Substitution is not a basis for a Request for Change Order or Claim against the Port.

#### **G-04.09 CONTRACTOR TO COMPLY WITH ALL LAWS**

The Contractor shall at all times comply with all federal, state and local laws, ordinances and regulations, including but not limited to those environmental laws and other laws listed in the Contract Documents and other laws referred to herein, which in any manner apply to the performance of this Contract. Such compliance shall include, but is not limited to, the payment of all applicable taxes, royalties, license fees, penalties and duties.



**G-04.10 DISPOSAL OF WASTE MATERIALS**

- A.** Waste material is defined as all material from demolition, excavation, dredging, or other source that is unsuitable to, or in excess of the needs of the work, or material that is designated for removal and disposal from the Port property. Hazardous material is waste material containing substances classified as hazardous, potentially hazardous, infectious, toxic or dangerous under applicable Local, State or Federal law.
- B.** Both waste material and hazardous materials shall be disposed of in strict compliance with all laws, regulations and the Contract Documents.
- C.** All waste material shall become the property of the Contractor. The Contractor is solely responsible for the lawful managing and disposal of waste material and shall indemnify, defend and hold the Port harmless from all liability, damages, claims, lawsuits, penalties and expenses, whether direct, indirect or consequential (including but not limited to attorney's and consultant's fees and other expenses of litigation or arbitration) arising from or in any way connected with, the demolition, excavation, removal or disposal of waste materials.
- D.** The value of waste materials, if any, shall be credited to the Port in the total Contract Sum.
- E.** Contractor is responsible for disposal of hazardous materials generated by the Contractor, such as used motor oils, lubricants, cleaners, etc. according to the Contract Documents and according to local, State, and Federal law.
- F.** If the Contractor, during the course of the Work, unexpectedly encounters materials that it believes may be hazardous material, it shall immediately stop work on this activity and notify the Engineer and, to the extent Contractor believes the encounter may entitle it to an adjustment in the Contract Time or Contract Sum, shall provide timely notice thereof in accordance with Paragraphs G-04.34 and G-05.02.
- G.** The Port of Seattle will retain title to all hazardous material that is on the Project Site as of the Contract Execution Date and encountered during demolition, removal, and excavation. The Port of Seattle will be identified as the hazardous waste generator and will sign all hazardous waste shipment manifests for non-contractor generated hazardous wastes. Nothing contained within these Contract Documents shall be construed or interpreted as requiring Contractor to assume the status of Owner or generator of hazardous waste substances for non-contractor generated hazardous wastes.

**G-04.11 STATE AND LOCAL TAXES**

- A.** All or a portion of the labor and materials furnished under this Contract may be subject to retail sales taxes and other state and local taxes, which taxes are payable by the Contractor.
  - 1.** State Taxes: The Washington State Department of Revenue has issued special rules designed to assist the Contractor in accurately reporting to the Department of Revenue the Contractor's tax liability. Although information may be included in the Contract Documents regarding the application of state taxes to a particular contract or Bid Item, it shall be the Contractor's responsibility as to the correct interpretation of the laws and regulations relating to such taxes. Adjustments will not be made in the amount to be paid by the Port under the contract because of any misunderstanding by the Contractor as to the Contractor's liability for, or the amount of, any taxes. If the Contractor is in doubt as to the tax procedures in any

particular case, the Contractor shall consult with the Washington State Department of Revenue.

2. State Sales Tax - Rule 170: WAC 458-20-170, and its related rules, applies to the constructing and repairing of new or existing buildings, or other structures, upon real property. For work performed in such cases, the Port will automatically add this sales tax to each payment to the Contractor and the Contractor shall timely remit this sales tax to the Washington State Department of Revenue. The Contractor shall not include the retail sales tax in the schedule of prices, or in any other contract amount subject to Rule 170.
  3. State Sales Tax - Rule 171: WAC 458-20-171, and its related rules, apply to building, repairing, or improving streets, roads, etc., which are owned by a municipal corporation, or political subdivision of the state, or by the United States, and which are used, primarily, for foot or vehicular traffic. For work performed in such cases, the Contractor shall include Washington State Retail Sales Taxes in the various schedule of prices, or other contract amounts, including those that the Contractor pays on the purchase of materials, equipment, or supplies used or consumed in doing the Work.
- B.** The Schedule(s) of Prices will indicate which bid items are subject to Rule 171. Any such identification by the Port is not binding upon the Department of Revenue.

#### **G-04.12 PERMITS, LICENSES, FEES AND NOTICES**

- A.** Unless otherwise specified in the Supplementary Conditions, the Contractor shall procure and pay for all permits, licenses and all governmental inspection fees which are necessary or incidental to the performance of the Work and shall give all notices required by such permits and licenses. Any action taken by the Port to assist the Contractor in obtaining permits or licenses shall not relieve the Contractor of its sole responsibility to obtain permits or licenses.
- B.** Where applicable law, regulations, ordinances or agency policy prohibits the issuance of a necessary temporary operational or other permit to entities other than a public agency, the Port will support the Contractor's request for such permit and will accept the permit in the Port's name, but only if:
1. The Contractor takes all necessary action leading to the issuance of the permit;
  2. The permit is determined to be in the public interest;
  3. The permit applies only to work performed in connection with this Project;
  4. The Contractor agrees in writing, in a form approved by the Port, to abide by all requirements of the permit, and to indemnify, defend and hold harmless the Port from any liability in connection with work prosecuted under the permit; and
  5. The Contractor agrees, in writing, to indemnify, defend and hold the Port harmless from all expenses incurred in connection with such permit.
- C.** All costs incurred in connection with obtaining permits and licenses identified by the Contract to be the responsibility of the Contractor shall be considered incidental to the Contract and included in the Contract Sum and (1) no increase in the Contract Sum will be made due to any delay in obtaining such permits, but (2) an adjustment in the Contract Time may be made if, in spite of Contractor's commercially reasonable efforts, the permits or licenses are not issued within a reasonable period of time (specifically considering the

length of time, under currently prevailing conditions, it regularly takes for the agency having jurisdiction to issue a permit for a project of similar size and complexity to the Project) and Contractor submits a timely Notice of Event in accordance with Paragraphs G-04.34, G-05.02 and G-07.02. Any loss of Contract Time suffered by the Contractor due to unreasonable delays in obtaining permits or licenses identified by the Contract to be the responsibility of the Port may be considered in relation to a request by the Contractor for an adjustment to the Contract Time in accordance with Paragraph G-07.02, provided timely Notice of Event is first provided.

- D.** The Contractor shall assume all costs and liabilities arising from the use of patented devices, materials, or processes used on or in performance of the Work.
- E.** Contractor is responsible to notify in writing appropriate agencies at the start of construction.
- F.** For purposes of this Contract and specifically the provisions of this Paragraph, Contractor acknowledges and agrees that the Airport Building Department, the Port of Seattle Fire Department, and members of the Aviation Facilities & Infrastructure Group when acting as a utility purveyor at Seattle-Tacoma International Airport shall be considered separate governmental authorities having independent authority over, and responsibility for the Project, and over whom the Engineer does not have control. For purposes of RCW 4.24.360, the Airport Building Department, the Port of Seattle Fire Department, and members of the Aviation Facilities & Infrastructure Group when acting as a utility purveyor at Seattle-Tacoma International Airport have independent authority over the Project, and the acts or omissions of any of them shall not be considered acts or omissions of the Port.

#### **G-04.13 UTILITIES AND SIMILAR FACILITIES**

- A.** In connection with any underground and utility Work, the Contractor shall strictly comply with Chapter 19.122 of the Revised Code of Washington. Washington State law, RCW 19.122, requires anyone planning to excavate to know what is below the ground surface before they dig. Any cost or scheduling impact resulting from the Contractor's failure to comply with these statutory provisions shall be borne by the Contractor.
  - 1. The Port of Seattle is now a member of the One Call system. Two business days before commencing any excavation, the Contractor shall call 811 or 1-800-424-5555 to provide notice of the scheduled start of excavation. On busy days (M-W) hold time can be lengthy. Entering your locate request online, via ITIC, eliminates the hold time. To learn more about ITIC visit [www.callbeforeyoudig.org](http://www.callbeforeyoudig.org).
  - 2. If utility locating is needed for design or other purposes, where no digging is involved, then please only fill out the POS-811 form and email to [posutility@portseattle.org](mailto:posutility@portseattle.org). Do not call 811 if you will not be digging 12" or deeper.
- B.** Unless specified otherwise by the Contract, Contractor shall plan and execute its work to prevent outages in existing utilities or disruption of service. Where removal or relocation of known or disclosed utilities or temporary utility connections are necessary to accommodate the Work, such removal, relocation or temporary connections shall be performed at the Contractor's sole expense unless it is specified in the Contract Documents that it will be performed by the Port or by others.
- C.** The Port or utility owner may enter the Project Site from time to time to make changes as may be necessary for the relocation of utilities or to make necessary connections or repairs. Where the utility owner is identified as being responsible for removing or

relocating utilities, the Contractor shall make timely arrangements with the utility owner to schedule such work to accommodate the Work. The Contractor shall also cooperate with and facilitate any necessary access to or on the job site by the forces engaged in such work and shall conduct its operations in such a manner as to avoid delay or hindrance to the work being performed by such other forces.

- D.** Contractor shall not commence any excavations until existing utilities have been staked or marked by the utility owner. The Port will provide utility locates for Port-owned utilities. The Contractor may encounter underground utilities adjacent to their work operations. It shall be the Contractor's responsibility to protect these utilities from damage. If the Contractor discovers the presence of any unknown/unidentified utilities at the Project Site, the Contractor shall provide the Port oral or written notice promptly (and in no event more than 24 hours after discovery). If the Contractor asserts that the discovery is an Event, written notification shall be made in accordance with Paragraphs G-04.34 and G-05.02.
- E.** The Contractor may request Port approval for changes or rearrangement to any utility for the Contractor's convenience in order to facilitate construction of the Work. The Port shall be the sole judge of whether the proposed change or rearrangement is acceptable. The Contractor shall be responsible for any delay or cost resulting from this request.
- F.** Loss of time, if any, suffered by the Contractor due to delays in removal or relocation of any utilities by others may be considered in relation to a request by the Contractor for an adjustment to the Contract Time in accordance with Paragraph G-07.02, provided that Contractor first submits a timely Notice of Event in accordance with Paragraphs G-04.34 and G-05.02.
- G.** If any underground utility not identified in the Contract Documents must be relocated to accommodate the Project, the Engineer will either arrange for the relocation of such utility or provide a Change Order to the Contractor to do such work.
- H.** Utilities damaged by the Contractor shall be repaired by the Contractor to their original condition at the Contractor's expense. The Contractor shall notify the Engineer of any such damage promptly (and in no event more than 24 hours after the damage occurs) and shall begin repairs immediately and work continuously until the utility is restored to the satisfaction of the Engineer.

#### **G-04.14 SAFETY**

- A.** The Contractor assumes full responsibility for and shall comply with all safety laws, regulations, ordinances and governmental orders with respect to the performance of this Contract. The Contractor shall so conduct all operations under this Contract as to offer the least possible obstruction and inconvenience to the Port, its tenants, abutting property owners, and the public. In addition to the obligation imposed by this Subparagraph, the Contractor shall be responsible for employing adequate safety measures and taking all other actions reasonably necessary to protect the life, health and safety of the public and to protect adjacent and Port-owned property in connection with the performance of the Work. The Contractor shall have the sole responsibility for the safety, efficiency and adequacy of the Contractor's plant, equipment and methods, and for any damage or injury resulting from their failure, or improper maintenance, use, or operation. The Contractor shall be solely and completely responsible for the conditions of the Project Site, including safety of all persons and property in performance of the Work. This requirement shall apply continuously, and not be limited to normal working hours. Any commitment or obligation of the Engineer to conduct construction review of the Contractor's performance

does not, and shall not, be intended to include review and adequacy of the Contractor's safety measures in, on, or near the Project site.

- B.** The Contractor shall establish and supervise:
  - 1. A safe and healthy working environment;
  - 2. An accident prevention program; and
  - 3. Training programs to improve the skill and competency of all employees in the field of occupational safety and health.
- C.** The Washington State Department of Labor and Industries shall be the sole and paramount administrative agency responsible for the administration of the provisions of the Washington Industrial Safety and Health Act of 1973 (WISHA).
- D.** The Contractor shall comply with the Federal Occupational Safety and Health Act of 1970 (OSHA), including all revisions and amendments thereto; the provisions of the Washington Industrial Safety Act of 1973 (WISHA); and the requirements of the following chapters of the Washington Administrative Code:
  - 1. Chapter 296-24 WAC General Safety and Health Standards.
  - 2. Chapter 296-62 WAC Occupational Health Standards.
  - 3. Chapter 296-155 WAC Safety Standards for Construction Work.
- E.** In addition, the Contractor shall comply with the following requirements when they are applicable:
  - 1. Chapter 296-44 WAC Safety Standards - Electrical Construction Code.
  - 2. Chapter 296-45 WAC Safety Standards - Electrical Workers.
  - 3. Local Building and Construction Codes.
- F.** In cases of conflict between different safety regulations or requirements, specifically including those imposed by the Port under Specification 01 35 29, the most stringent shall apply.
- G.** The Contractor shall maintain at the Project Site office, or other well-known place at the Project Site, all articles necessary for providing first aid to the injured. The Contractor shall establish, publish and make known to all employees, procedures for ensuring immediate removal to a hospital, or doctor's care, persons, including employees, who may have been injured on the Project Site. Employees may not be permitted to work on the Project Site before the Contractor has established and made known procedures for removal of injured persons to a hospital or a doctor's care.

#### **G-04.15 DISRUPTIONS CAUSED BY LABOR OR OTHER DISPUTES**

- A.** Definition: The term "dispute" as used in this Paragraph includes employment and labor-related disputes, whether or not the persons or other entities involved in the dispute have an employment relationship with the Contractor, the Port or its tenants. Examples of such disputes include, but are not limited to, informational or other picketing and all other forms of concerted or non-concerted activity.
- B.** Notice to Port of Labor Disputes
  - 1. If Contractor has knowledge that any actual or potential labor dispute is delaying or threatening to delay timely performance of the Work, the Contractor shall provide

the Port oral or written notice promptly (and in no event more than 24 hours after discovery) to permit the Port to attempt to mitigate any delay. If the Contractor is, in fact, unreasonably delayed, written notification shall be made in writing to the Engineer in accordance with Paragraphs G-04.34 and G-05.02.

2. The Contractor agrees to insert a provision in its Subcontracts and to require insertion in all subcontracts, that in the event timely performance of any sub contract is delayed or threatened by delay by any actual or potential labor dispute, the Subcontractor or Sub-subcontractor shall immediately notify the next higher tier Subcontractor, as the case may be of all relevant information concerning the dispute.
- C.** Required Contractor Actions. The Contractor will take all reasonable steps to prevent all disputes arising from the presence of the Contractor, its Subcontractors, Sub-subcontractors or Suppliers or the performance of the Work by any of them, from disrupting the Project or otherwise interfering with access to Port property by the Port, its agents, employees, tenants or employees thereof, or other contractors engaged on or near the Project Site. If such dispute disrupts the progress of the Work or interferes with access to Port property, the Contractor shall promptly take all reasonable action to eliminate or minimize such disruption or interference, including but not limited to: (a) utilizing all reasonable means to prevent all unlawful conduct or picketing, or to restrict all lawful picketing or other activities to a single entrance to Port property; (b) posting notices or signs which advise interested persons and labor organizations that a particular entrance to Port property is for the employees of "primary" or, as the case may be, "neutral" employers; (c) policing entrances to assure that only authorized personnel may use the same; (d) notifying all interested labor organizations of the "primary" or "neutral" status of particular entrances; (e) upon the request of the Port, altering or rerouting the access to the site(s) of the Work; and (f) in the event any such picketing or activity is unlawful or has a secondary impact upon the employees of neutral employers, tenants or their suppliers or contractors, promptly taking appropriate action to seek recourse through the appropriate governmental agency or State or Federal courts to limit the location of such picketing so as to reduce the impact thereof upon neutral employers.
- D.** The Port will cooperate with the Contractor to accomplish the foregoing actions and will render its assistance where appropriate; however, the Port shall have the right, without providing additional compensation to the Contractor, to direct the Contractor to modify any of the foregoing actions which the Contractor has taken or plans to take, or to overrule such actions, to designate the entrances to be used as "primary" or "neutral" entrances, and to take appropriate legal action in order to protect the interests of the Port and those of its tenants and other contractors. The foregoing actions to be taken by the Contractor are the Contractor's primary responsibility. Neither the failure of the Port to request that the Contractor take a specific action nor the exercise by the Port of its rights under this Paragraph shall modify or constitute a defense to or waiver of the obligations imposed upon the Contractor in this Paragraph.
- E.** Failure to take the action described above or to comply with the directives of the Port shall be considered a breach of the Contract. If the Contractor fails to satisfy the obligations imposed on it by this Paragraph G-04.15, the Contractor shall be liable for and defend, indemnify and hold the Port and its agents harmless from all liability, claims, damages, losses and expenses (including, but not limited to, attorneys' and consultants' fees and other expenses of litigation or arbitration) brought against the Port by a third party (including, but not limited to, lessees, tenants, contractors, customers, licensees and invitees of the Port) for injunctive relief or for monetary losses to the extent (but only to the

extent) arising from and attributable to Contractor's failure to satisfy the obligations imposed on it by this Paragraph G-04.15.

**G-04.16 SCHEDULE**

- A.** The Contractor shall prepare and submit to the Engineer a Schedule in the form specified and within the time specified. If the Contractor fails to provide, maintain and update a Schedule in compliance with the Contract, the Port is entitled to invoke its rights under the Contract, including those rights set forth in Paragraph G-10.10.
- B.** The Contractor shall not less than monthly update, revise and keep current the Schedule pursuant to the specified requirements. If the Contractor fails to comply with this Paragraph, the Port has the option to invoke its rights under the Contract, including those rights set forth in Paragraph G-10.10.
- C.** When required by the Contract Documents, the Contractor shall follow the construction sequencing or phasing set forth therein. Full compensation for conforming to such sequencing or phasing requirements is included in the Contract Sum, and no additional compensation will be allowed for any necessary sequencing or phasing.

**G-04.17 RESPONSIBILITY FOR COMPLETION**

- A.** The Contractor shall furnish such manpower, services, materials, facilities and equipment and shall work such hours, including night shifts, overtime operations, Sundays and holidays, as may be necessary to ensure the prosecution and completion of the Work or specified portions thereof within the Contract Time and Milestones set forth in the Contract. If it becomes apparent to the Engineer that Milestones will not be achieved or the Work will not be completed within the Contract Time, the Contractor agrees that it will, as necessary, take some or all of the following actions, at no additional cost to the Port to recover lost time:
  - 1. Increase manpower in such quantities and crafts as will substantially eliminate, in the judgment of the Engineer, the delay in prosecution of the Work,
  - 2. Increase on-site project management or superintendent service in order to assist with recovering time,
  - 3. Increase the number of working hours per shift, shifts per day, days per week or the amount of equipment, or any combination of the foregoing, sufficiently to substantially eliminate, in the judgment of the Engineer, the delay in prosecution of the Work, or
  - 4. Reschedule activities to achieve maximum practical concurrency of accomplishment of activities.

The Port shall have the right to require the Contractor, at no cost to the Port, to pursue one or more of these items in the event that: (i) the Schedule, as updated, indicates that the Contractor is fourteen (14) or more days behind schedule at any time until thirty (30) days prior to Milestones or Substantial Completion; or (ii) the Schedule, as updated, indicates that the Contractor is seven (7) or more days behind schedule at any time during the last thirty (30) days prior to Milestones or Substantial Completion.

- B.** In addition, the Engineer may require the Contractor to submit a Recovery Schedule as defined in the Contract demonstrating its proposed plan to make up lag in scheduled progress and to ensure completion of the Work within the Contract Time. If the Engineer finds the proposed plan not acceptable, the Engineer may require the Contractor to revise

or submit a new plan. If the actions taken by Contractor or the second plan proposed are not satisfactory, the Engineer may require Contractor to take any of the actions set forth in this Paragraph without additional cost to the Port to make up the lag in prosecution of the Work.

- C.** Failure of the Contractor to substantially comply with the requirements of this Paragraph may be considered grounds for a determination by the Engineer that the Contractor is failing to prosecute the Work with such diligence as will ensure its completion within the time specified in the Contract and will entitle the Port to take whatever action it deems necessary and appropriate under Article G-10.

#### **G-04.18 DOCUMENTS TO BE MAINTAINED AT PROJECT SITE**

The Contractor shall maintain at the Project Site, in good order for use by the Engineer, one complete hardcopy of the Contract Documents, Requests for Information, approved Submittals, Working Drawings, Schedules, and As-Built Drawings. All of these documents shall be continuously updated. Without limiting any of the Port's other rights, the failure to keep As-Built Drawings current may result in the withholding of funds from payment in accordance with Paragraph G-10.07.

#### **G-04.19 REQUESTS FOR INFORMATION**

- A.** The Contractor shall exercise reasonable diligence to determine if the Work to be performed is not sufficiently detailed or explained in the Contract Documents or if there is an apparent conflict or inconsistency between any part of the Contract Documents that is not resolved by Paragraph G-02.02, and shall promptly submit to the Engineer for further written explanations. Before submitting an RFI, the Contractor shall diligently and thoroughly examine the Contract Documents. The Port reserves the right to back charge the Contractor for costs incurred by the Port to respond to RFIs which could have been avoided had the Contractor examined the Contract Documents. The Contractor shall also plan its Work in an efficient manner so as to allow for timely responses to RFIs without impacting the Work. If requested by the Engineer, the Contractor shall prioritize its RFIs and explain the reasons for such priority. The Contractor's submission of an RFI does not fulfill the requirements of Paragraphs G-04.34 and G-05.02.
- B.** The Port will endeavor to reply to the RFI as fast as the needs of the Project warrant. The Port will at a minimum be entitled to 7 days to process an RFI and provide a response, provided, however, that such 7 day period is not to be construed as commitment that the Port will respond to all RFIs within 7 days. RFIs involving Work to be executed more than 30 days from the Port's receipt of the RFI are presumed to be non-critical. In submitting any RFI, the Contractor shall alert the Port if it considers the issue to be critical and the Port will attempt to prioritize and expedite a response to any such RFI if the Port concurs the issue is critical and if the criticality was not caused by the Contractor's failure to plan.
- C.** Responses by the Port to RFIs are not changes to the Contract. If Contractor believes a response to an RFI constitutes changed work or causes an Impact to Unchanged Work or a delay to the Schedule, the Contractor is required to submit a Notice of Event in accordance with the requirements of Paragraphs G-04.34 and G-05.02.

#### **G-04.20 WORKING DRAWINGS AND SUBMITTALS**

- A.** Where required by the Contract, the Contractor shall submit specified Submittals that will demonstrate that the Contractor's proposed materials, equipment, or methods of Work are



in compliance with the Contract. The Port will not be obligated to accept or pay for materials, equipment or Work for which Submittals are required herein, unless and until all Submittals have been submitted and accepted by the Port.

- B.** By making Submittals and in submitting Working Drawings, the Contractor represents that it has determined and verified all materials, field measurements, and related field construction criteria, and that the Contractor has checked and coordinated the information contained within the Submittal or Working Drawing with the requirements of the Work and the Contract Documents.
- C.** Review by the Port of the Contractor's Working Drawings or Submittals shall not relieve the Contractor of full responsibility for the accuracy of dimensions and details. Such review shall likewise not constitute acceptance by the Port of the correctness or adequacy of such Submittals, nor shall it constitute a representation or warranty by the Port that the Submittals will satisfy the requirements of the Contract. The Port's review of a Submittal shall not relieve the Contractor from responsibility for errors or omissions in the Submittals. Review by the Port shall not constitute approval of the safety precautions employed by the Contractor during construction, or constitute approval of the Contractor's means or methods of construction. The Contractor shall not deviate from Submittals that have been reviewed with a finding of "Accepted" without submitting the proposed deviation for the Port's review and acceptance.
- D.** Any delay arising from an incomplete, late, or otherwise improper Submittal (or a properly requested resubmission of a Submittal) shall be entirely at the Contractor's risk and shall not be the basis for a claim by the Contractor for additional compensation or an extension of Contract Time. Submittals marked "subject to change" will not be reviewed. The Port will not review Submittals that depend for their review on other Submittals not yet submitted, that are not required by the Contract Documents, or that are not submitted by the Contractor.
- E.** When resubmitting a Submittal, the Contractor shall direct specific attention, in writing or on the resubmittal itself, to all revisions it has made by clouding, bolding, shading or highlighting.

#### **G-04.21 CUTTING, FITTING AND PATCHING OF WORK**

- A.** The Contractor shall be responsible for all cutting, fitting, patching or such other altering as may be required to complete the Work, or to make its several parts fit together properly.
- B.** The Contractor shall not damage or endanger any portion of the Work, Port property or facilities, other work of the Port, or that of any separate contractors by cutting, fitting, patching or other altering of any work, or by excavation. The Contractor shall not alter any of the work of the Port or any separate contractor without written authorization from the Port.

#### **G-04.22 INSPECTION OF THE WORK**

- A.** It is the Contractor's responsibility to provide materials, supplies, equipment and workmanship that conform to the Contract Documents. Unless specifically provided otherwise in the Contract, the Contractor shall be responsible for demonstrating and documenting that the materials or equipment to be incorporated into the Work comply with the Contract. All materials testing or special inspections (whether required by applicable code, Contract requirement, or otherwise) shall be performed in strict accordance with the

Contract Documents, and the Contractor shall undertake, cooperate with, and bear all costs of said tests as provided in the Contract Documents.

- B.** If conformance of materials or equipment to the requirements in the Contract is not determinable through inspection and tests, the Contractor shall provide properly authenticated documents, certificates, or other satisfactory proof of conformance at its sole cost. Such documents, certifications, and evidence shall include performance characteristics, materials of construction, and the physical and chemical characteristics of materials.
- C.** All Work and all materials and equipment furnished shall be subject to inspection by the Engineer. The Contractor shall provide the Port and its authorized employees, agents and consultants access to the Work at all times, including sufficient, safe and proper facilities (lifts, scaffolding, boats, including operators, etc.) to enable the Engineer to ascertain that the materials and equipment furnished and Work performed are in conformance with the Contract.
- D.** Upon request of the Engineer, the Contractor shall furnish without charge such samples of materials used or to be used in the Work to ensure conformance with the Contract Documents. Work performed or materials used without such inspection may be ordered removed and replaced at the Contractor's expense.
- E.** Inspections, tests, measurements, or other acts or functions performed for or by the Port are recognized as being solely to assist the Engineer in determining that the Work, materials, rate of progress and quantities installed comply with the Contract requirements. Such activities shall in no manner whatsoever be construed to relieve the Contractor from the responsibility for performing its own inspections and tests as necessary to ensure compliance with the Contract. In addition, any inspection, test or measurement by or for the Port does not constitute or apply acceptance of the Work by the Port or waive any rights of the Port to require the Work be completed in strict accordance with the Contract and does not impair the Port's authority to reject Non-Conforming Work or evoke any remedy to which it may be entitled.
- F.** The Work may be subject to inspection by various governmental agencies, utility owners or by consultants or agents of the Port. The Contractor shall cooperate and make the site available for all such persons or agencies with regard to their inspections, including providing access for inspection by way of safe and proper facilities (i.e., lifts, scaffolding, boats, including operators). Such inspection shall in no way make such agencies or persons parties to this Contract and shall not constitute an interference with the Work or the rights of either the Port or the Contractor. In its scheduling and planning the Contractor shall allow sufficient time for such inspections.
- G.** Where Work is required to be done on any railroad, utility, or other similar facility, representatives of the same shall be permitted by the Contractor to inspect the Work upon the request of the Engineer.

#### **G-04.23 UNCOVERING OF WORK**

- A.** If any portion of the Work is covered prior to inspection called for by applicable legal requirements (specifically including permit requirements) or as required by the Contract Documents, the Contractor shall, upon request of the Engineer, uncover or remove the Work for inspection by the Engineer or other governmental representatives, and replace the Work to the standard required by the Contract Documents, all at the Contractor's expense.

- B.** If any other portion of the Work has been covered or completed, the Contractor shall, upon the request of the Engineer, remove or uncover such Work for the Engineer's observation. The Contractor shall subsequently restore that portion of the Work to the standard required by the Contract. If the exposed Work meets the Contract requirements, the cost of removing or uncovering the Work and restoring that portion of the Work shall be paid for by the Port at a price previously agreed to by the Port and Contractor, or on a Force Account basis. If the exposed Work fails to meet the Contract requirements, all costs associated with the removing or uncovering, correction and restoring that portion of the Work shall be at the Contractor's expense.

#### **G-04.24 CORRECTION OF WORK**

- A.** The Contractor shall, at no additional expense to the Port, correct all Non-Conforming Work. Upon notice from the Engineer of Non-Conforming Work, the Contractor shall within a designated time period identified by the Port correct or replace the Non-Conforming Work or provide a written plan satisfactory to the Engineer indicating corrective action to be taken. Such Work shall be corrected even though it was previously inspected by the Port, payment for it was included in a Progress Payment, whether or not it was completed, whether or not it was observed before or after the date of Final Acceptance, and whether or not it occurred or manifested itself before or after Final Acceptance. If the Contractor fails to correct Non-Conforming Work within the time designated by the Port, the Port may correct it as provided for in Paragraph G-10.05.
- B.** Notwithstanding the foregoing, if the Port determines that Non-Conforming Work does not constitute a dangerous or unsuitable condition, the Port may, at in its sole discretion, waive the right to require correction and elect to accept such Work. In such case, the Port shall reduce the Contract Sum in a reasonable amount to account for such Non-Conforming Work. If Contractor disputes the amount of the reduction, it shall comply with Paragraphs G-04.34 and G-05.02.

#### **G-04.25 RESPONSIBILITY FOR WORK**

- A.** All Work performed under the Contract and all materials to be incorporated in the Work, whether in storage or on the site and whether under the care, custody and control of the Contractor, Subcontractors, or Sub-subcontractors, shall be at the sole risk and responsibility of the Contractor until Substantial Completion of the entire Work, except as may be limited by the Engineer in writing for Partial Substantial Completion of a designated portion thereof as provided in Paragraph G-08.06. Damage from any cause to either permanent or temporary work, utilities, materials, equipment, existing structures, the Project Site and other property owned by the Port or others, shall be repaired by the Contractor to the satisfaction of the Engineer at no additional cost to the Port.
- B.** Without limiting the generality of the foregoing, it is the Contractor's responsibility to protect the Work from weather damage. In instances when the Contractor believes weather may be detrimental to prosecution of the Work, Contractor shall provide the Port notice, whether oral or written, as soon as possible to consider whether any action by the Contractor is necessary or advisable. No extension of the Contract Time for such weather will be approved unless the Contractor also complies with Paragraphs G-04.34, G-05.02 and G-07.02. Where weather-sensitive Work is scheduled during periods where the weather may reasonably be expected to impact the performance of the Work, the Contractor is responsible for providing any temporary weather enclosures necessary for Work to proceed without weather delays.

- C.** In preparation for and during any suspension of Work as provided in Article G-10, the Contractor shall take reasonable precautions to prevent damage to, or deterioration of, the Work. Except as provided elsewhere in the Contract Documents, the Contractor shall be responsible for all damage or deterioration to the Work during the period of suspension and shall, correct or restore such damaged and deteriorated Work to a condition acceptable to the Engineer prior to resuming work. A suspension of Work shall not relieve the Contractor of any of its responsibilities under the Contract. The Contractor may be entitled to compensation for the necessary cost of protecting the Work during periods of suspension as allowed by Paragraph G-10.04.

**G-04.26 RESPONSIBILITY FOR PROTECTION OF PROPERTY**

- A.** The Contractor shall bear sole responsibility for any pollution which may occur as a result of its operations, including but not limited to soil, air, water, noise, or other pollution, including but not limited to any costs (including attorneys' and consultants' fees), penalties, or other liabilities imposed or sought to be imposed as a result of such pollution.
- B.** The Contractor shall protect from damage all private, public and Port-owned utilities, including but not limited to communication lines, power lines, sewer and water lines, railroad tracks and appurtenances, traffic lighting and signal systems and similar facilities.
- C.** On the Contractor's own volition or upon written notice from the Engineer, the Contractor shall, at no expense to the Port, provide and install safeguards acceptable to the Engineer to protect public and private property. If public or private property is damaged or destroyed or its use interfered with by the Contractor, the Contractor's agents or the Contractor's employees, such interference shall be terminated and damaged or destroyed property repaired and restored immediately to its former condition by the Contractor at the Contractor's expense. If the Contractor does not respond promptly to a written request or refuses to restore damaged or destroyed property to its original condition, the Engineer may have such property restored by other means at the Contractor's expense.

**G-04.27 EMERGENCIES**

In an emergency affecting the safety of persons, the Work, or adjoining property, the Contractor, without special instructions or authorization from the Engineer, shall act to prevent such threatened loss or injury. In such an emergency, the Contractor shall perform such additional work as required. Any compensation claimed by the Contractor on account of emergency work shall be governed by Paragraph G-08.05, or as deemed appropriate by the Engineer. If, during the progress of the Work or during the Warranty period, the Contractor is absent from the locations of the Work at the time when a failure or faulty condition of the Contractor's work requires emergency action in the public interest, the Port shall have the right to make repairs or corrections by itself or with other forces, as required, and the Port may withhold from the Contractor any costs which the Port incurs from such emergency work.

**G-04.28 CLEANUP**

At all times, and as may specifically be requested by the Engineer or required by the Contract Documents, the Contractor shall clean up and remove all refuse resulting from the Work in order that the Project site remains free from an accumulation of construction debris. Upon failure to do so within 24 hours after request by the Engineer, such cleanup work may be done by the Port and the cost thereof back charged to the Contractor and deducted from the Contract Sum.

**G-04.29      WARRANTIES**

- A.**     Good Workmanship and New Materials. The Contractor warrants to the Port that all workmanship, materials and equipment furnished under this Contract will be new unless otherwise specified, and that all Work will be of good quality, free from fault or defect and in conformance with the Contract Documents.
- B.**     Title. The Contractor warrants that title to all Work, materials and equipment covered by a request for a Progress Payment or Final Payment will pass to the Port upon the receipt of payment by the Contractor free and clear of all liens, claims, security interests or encumbrances. Passage of title shall not, however, (1) relieve Contractor from any of its obligations and responsibilities for the Work, equipment or materials, (2) waive any rights of the Port to require full compliance by Contractor with the Contract requirements, or (3) constitute acceptance of the Work, equipment or materials.
- C.**     One-Year General Warranty.
  - 1.     If, within one year after the applicable Warranty Start Date (or such longer period of time as may be prescribed by law or the terms of any applicable special warranty required by the Contract Documents), the Work or any specific portion thereof is found to be Non-Conforming Work, the Contractor shall correct such Non-Conforming Work within the time designated by the Port.
  - 2.     Work corrected by the Contractor under this Subparagraph C shall also be subject to the provisions of this Subparagraph for a one-year period from the date the Port accepts the corrected Work.
  - 3.     Nothing contained in this Subparagraph C shall be construed to establish a period of limitation (whether legal, equitable or otherwise) with respect to any other obligation imposed on the Contractor by the Contract Documents, including (but not limited to) the obligation imposed by Paragraphs G-04.24 and G-04.25.
- D.**     Special Warranties. Additional, special warranty obligations may be imposed in other parts of the Contract Documents.
- E.**     Enforcement. All Subcontractors', Sub-subcontractors', Manufacturers', and Suppliers' warranties and guarantees, express or implied, respecting any part of the Work and all materials used therein shall be obtained and enforced by the Contractor for the benefit of the Port without the necessity of separate transfer or assignment thereof. When specified in the Contract Documents, the Contractor shall require Subcontractors, Sub-subcontractors, Manufacturers and Suppliers to execute separate warranties and guarantees in writing directly to the Port.
- F.**     Cumulative. The obligations and remedies described in this Paragraph G-04.29 are in addition to the obligations and remedies described in Paragraph G-04.24.

**G-04.30      SURVEYS**

- A.**     If the Port is required by the Contract Documents to set points and elevations or otherwise perform on-site measurement, the Contractor shall provide sufficient space and safe facilities to enable the Engineer to do so. The Contractor is responsible for detailed dimensions and elevations measured from stakes and marks established by the Engineer.
- B.**     All Work performed shall be in conformance with the lines, grades and dimensions indicated on the drawings or as staked by the Engineer. If a discrepancy is noted between the drawings and staking, the Contractor shall provide the Port oral or written notice promptly (and in no event more than 24 hours after discovery). Where tolerances are

stated, the work performed shall be within those tolerances. The Engineer will determine if the Work conforms to such lines, grades and dimensions, and his determination shall be final.

- C.** All controls set by the Port or others shall be carefully preserved by the Contractor. Any cost to reset controls due to the Contractor's negligence shall be the burden of the Contractor.

#### **G-04.31 NOTIFICATION REGARDING EXCAVATED ARCHEOLOGICAL ITEMS**

If resources of potential archeological significance are encountered during construction or excavation, the Contractor shall immediately stop work, secure the Project Site in the vicinity of the find and notify the Engineer. Further instructions will be provided by the Port. Pending those instructions, the Contractor shall arrange 24-hour security to protect the find. The Contractor shall not notify the media and shall direct any media inquiries to the Port. The Port and Contractor shall work with a professional archaeologist to resume construction as soon as possible without compromising the archeological find. This will be done in accordance with the treatment plan and mitigation activities outlined in the Archeological Assessment to be done and provided by the Port.

#### **G-04.32 GRATUITIES**

The Contractor shall not extend any loan, gratuity, or gift of money or services in any form whatsoever to any employee or officer of the Port, nor shall the Contractor rent or purchase any equipment, materials, or services from any employee or officer of the Port.

#### **G-04.33 SUBCONTRACTING**

- A.** The Contractor is fully responsible for the acts and omissions of all Subcontractors, Sub-subcontractors, Suppliers and all other persons performing a portion of the Work.
- B.** The organization of the Specifications and arrangement of Drawings shall not control the Contractor in dividing the Work among Subcontractors or in establishing the extent of the Work to be performed by any trade. Such division of work is the sole responsibility of the Contractor.
- C.** Unless otherwise provided in the Contract Documents, the Contractor shall submit to the Engineer in writing the identity of the proposed Subcontractors and those Suppliers who are to furnish materials or equipment specifically designed for this Project. This information shall be provided to the Port prior to Notice to Proceed. The Engineer will respond to the Contractor within the deadline otherwise established in the Contract and state whether the Port has an objection to any proposed Subcontractor or Supplier. If the Port unreasonably rejects a proposed Subcontractor or Supplier, and the Contractor is required to replace that Subcontractor or Supplier at an increased cost, the Contract Sum and Contract Time shall, subject to compliance with the requirements of Paragraphs G-04.34 and G-05.02, be subject to adjustment. If at any time during the performance of this Contract the Contractor wishes to add or make a substitution for a Subcontractor or such Supplier, the Contractor shall first give the notice required above, and the Port may object to such proposed substitute within ten (10) days of being so notified. The Contractor shall not enter into a contract with a proposed Subcontractor or a Supplier of specifically designed equipment to whom the Port has made reasonable objection.

- D.** By an appropriate agreement, the Contractor shall require that each Subcontractor and Supplier, to the extent of the Work to be performed by that Subcontractor or Supplier, be bound to the Contractor to perform such portion of the Work according to the terms of the Contract Documents and to assume toward the Contractor all of the obligations which the Contractor assumes toward the Port under this Contract. Such agreement shall preserve and protect the rights of the Port with respect to the Work to be performed by the Subcontractor or Supplier so that the contracting thereof by the Contractor to others will not prejudice the Port's right to have the Work performed in accordance with the Contract Documents. The Contractor shall require each Subcontractor and Supplier to enter into similar agreements with all Sub-subcontractors and Suppliers, so that this requirement shall be applicable to Sub-subcontractors and Suppliers at all tiers. The Port reserves the right to obtain copies of any Subcontractor, Sub-subcontractor and Supplier agreements at any tier from the Contractor. The award of a subcontract or contract for the supplying of materials or equipment, by the Contractor does not create a contract between the Port and the Subcontractor or Supplier. Subcontractors and Suppliers shall have no rights whatsoever against the Port by reason of their contract with the Contractor. The foregoing provision shall apply with equal force to Subcontractors, Sub-subcontractors, Suppliers and all other persons otherwise engaged to do any portion of the Work.
- E.** At the time of subcontract execution, the Contractor shall verify that each of its first-tier Subcontractors meet all of the bidder responsibility criteria required by Section 39.06.020 of the Revised Code of Washington and this Contract. The Contractor shall include the language of this Paragraph in each of its first tier subcontracts, and shall require each of its Subcontractors to include the same language of this Paragraph in each of their subcontracts, adjusting only as necessary the terms used for the contracting parties. Upon request of the Port, the Contractor shall promptly provide documentation to the Port demonstrating that the Subcontractor meets all applicable subcontractor responsibility criteria. The requirements of this Paragraph apply to all Subcontractors regardless of tier.
- F.** When a portion of the Work that has been subcontracted by the Contractor is not being prosecuted in a manner satisfactory to the Engineer, the Contractor shall, on the written request of Engineer, take immediate steps to correct the deficiency or remove the Subcontractor, or Sub-subcontractor, from the Project at no cost to the Port. In the event of removal, the removed Subcontractor, or Sub-subcontractor, shall not be further employed in the Work.

#### **G-04.34 NOTICE OF EVENTS**

The Contractor must provide a timely Notice of Event if the Contractor encounters, experiences, or suffers any Event during the course of Project. Detailed requirements regarding the Notice of Event and additional, required documentation are set forth in Paragraph G-05.02. If the Contractor fails to satisfy these requirements, the Contractor shall be deemed to have waived all right to submit any Request for Change Order to the Port arising from or related to the Event, to make any Claim against the Port arising from or related to the Event or to pursue any other recovery of any kind arising from or related to the Event.

#### **G-04.35 PREREQUISITE TO SUIT**

No legal action against the Port may be filed on account of a Claim or other liability arising out of or related to this Contract unless:

- A.** The requirements of Paragraph G-04.34 and G-05.02 have been strictly complied with, and

- B.** The procedures of Paragraph G-09.01 and G-09.02 have been exhausted, and
- C.** The lawsuit is filed in the exclusive venue specified in Paragraph G-02.01.B and served on the Port within 180 days of the later of (i) the date of Substantial Completion or (ii) thirty (30) days following the date on which the parties complete the dispute resolution process provided for in G-09.02.F. The Contractor's failure to strictly comply with all requirements of this Paragraph shall be a complete bar to any lawsuit.

**G-04.36 INDEMNIFICATION**

- A.** In addition to any other duty to defend or indemnify set forth in the Contract, the Contractor shall defend, indemnify and hold harmless the Port and its agents from all liability, claims, damages, losses and expenses, whether direct, indirect or consequential (including, but not limited to, attorneys' and consultants' fees and other expenses of litigation or arbitration) arising out of the performance of this Contract, which is caused, or alleged to be caused, in whole or in part, by any breach of Contract or negligent act or omission of the Contractor (which for the purposes of Subparagraphs A and B of this Paragraph only shall include the Contractor and all of its Subcontractors, Sub-subcontractors, Suppliers, agents, any other person directly or indirectly employed by any of them, or anyone for whose acts any of them may be liable); provided, however, that where such liability, claim, damage, loss or expense arises from the concurrent negligence of (1) the Port or its agents, and (2) the Contractor, it is expressly agreed that the Contractor's obligations of defense and indemnity under this Paragraph shall be effective only to the extent of the Contractor's negligence. Such obligations shall not be construed to negate, abridge or otherwise reduce any other right or obligation of indemnity that would otherwise exist as to any person or entity described in this Paragraph. This Paragraph shall not be construed so as to require the Contractor to defend, indemnify, or hold harmless the Port from such claims, damages, losses or expenses caused by or resulting from the sole negligence of the Port or its agents.
- B.** In any and all claims against the Port or its agents by any employee of the Contractor, the indemnification obligation of Subparagraph A above shall not be limited in any way by any limitation on the amount or type of damages, compensation benefits payable by or for the Contractor under applicable workers' or workmen's compensation, benefit, or disability laws (including, but not limited to the Industrial Insurance laws, Title 51 of the Revised Code of Washington). The Contractor expressly waives any immunity the Contractor might have had under such laws, and, by agreeing to enter this Contract, acknowledges that the foregoing waiver has been mutually negotiated by the parties.
- C.** The Contractor shall pay all attorney's fees and expenses incurred by the Port in establishing and enforcing the Port's rights under this Paragraph, whether or not suit was instituted.
- D.** Additional indemnification obligations may be imposed on the Contractor elsewhere in the Contract Documents, including (but not limited to) Paragraphs G-04.10, G-04.12, G-04.15 and G-04.37.

**G-04.37 SOFTWARE**

- A.** Notwithstanding any provisions to the contrary contained in any standard commercial license pertaining to any Software delivered under this Contract, the Port shall have the following rights as to such Software:



1. The Port of Seattle will have a perpetual, irrevocable, royalty-free (or paid up) license of the Software. Unless otherwise provided in the Supplementary Conditions, the license may be nonexclusive and nontransferable, subject only to the Port's right to transfer to a successor-in-interest.
  2. The Port shall have the right to use the Software, and may copy the Software for use: (i) on computer/hardware for which the Software was acquired and any replacement thereof, (ii) on any backup computer/hardware, in the event that the computer/hardware for which the Software was acquired is inoperative, and (iii) on such other media as the Port may elect for safekeeping (archival) or backup purposes.
  3. Excluding only commercial off-the-shelf Software for which no customization has been provided, the Port shall be provided with a complete copy of the source code for all Software. For any commercial off-the-shelf Software for which Contractor has performed any configuration (other than that automatically provided by the installation utility bundled with the particular commercial off-the-shelf Software) or customization, the Port shall be provided with a complete record the process, information, code or data used in the configuration and a complete copy of the source code for any customized portion of the Software.
  4. The Port shall specifically have the right to make modifications to, and create derivative works from, any portion of the Software for which the Port is entitled to receive the source code. Any such derivative work shall remain subject to the terms set forth in this Paragraph.
- B.** To the extent that the Software (and specifically the source code) constitutes an unpublished work for which Contractor claims trade secret protection, the Port of Seattle take reasonable measures to protect the secrecy of, and avoid the disclosure of and unauthorized use of, the Software; provided, however, the Port may disclose the Software: (i) as required by law, including Washington's Public Disclosure Act, (ii) to Port employees who require access to the information for purposes of the performance of their job or the fulfillment of any job-related responsibilities, and (iii) to contractors or subcontractors retained by the Port to perform repair or make modifications to the Software, provided those contractors or subcontractors likewise agree to maintain the confidentiality of the Software. The confidentiality restrictions set forth in this Paragraph shall end, as to any particular piece of information, in the event that that information (i) was publicly known or made generally available in the public domain prior to the time of disclosure by the Port; (ii) becomes publicly known and made generally available after disclosure to the Port through no action or inaction of the Port; (iii) is already in the possession of the Port at the time of disclosure, as shown by the Port's files and records immediately prior to the time of disclosure; (iv) is obtained by the Port from a third party without a breach of such third party's obligations of confidentiality; (v) is independently developed by the Port without use of or reference to the Software, as shown by the Port's files and records.
- C.** In addition to any other warranties set forth in the Contract, Contractor warrants that the Software: (i) will not contain any routine, program, "virus" or code which has been intentionally designed or created to either allow unauthorized access to, or use of, the Software by any agent or employee of Contractor or by any third party, or cause the Software or other program or programs to malfunction; (ii) will not contain any timer, clock, counter, or other limited design or routine which causes the Software to be erased, inoperable, or otherwise incapable of being used in the full manner for set forth under this

Contract, (iii) will be compatible and consistent with the current release of all Port operating system(s) and database system(s) (if any) on which the Software will be used, (iv) will make use of only supported systems and products (i.e.- no shareware, freeware, or unsupported legacy products); (v) will include application of all current upgrades and patches; and (vi) uses appropriate protocols and methods for integrity and security (i.e. encryption, authentication, logging, etc.).

- D.** In addition to any other indemnities set forth in this Contract, Contractor will defend, indemnify and hold the Port harmless from all liability, claims, damages, losses and expenses (including, but not limited to, attorneys' and consultants' fees and other expenses of litigation or arbitration) for claims for actual or alleged infringement of any patent, copyright, trade secret or other proprietary or intellectual property right arising from the Software; provided, however, Contractor shall have no obligation with respect to such liability, damages, losses and expenses to the extent attributable to the acts or omissions of the Port.

#### **G-04.38 AUDITS AND RETENTION OF RECORDS**

- A.** The Port or its designee shall have the right to inspect, audit or copy Project Records for the evaluation and determination of any issue related to the Contract or to the Contractor's performance thereunder, specifically including but not limited to any Requests for Change Orders or Claims brought by the Contractor or any Subcontractor or Supplier.
- B.** For the above-referenced purpose, all of the Project Records related to this Contract shall be open to inspection, audit, or copying by the Port or its designee:
1. During the Contract Time;
  2. For a period of not less than six (6) years after the date of Final Acceptance or termination of the Contract; and
  3. If any Claim, audit, or litigation arising out of, in connection with, or related to this Contract is initiated, all documents and records shall be resolved or completed, whichever occurs later.
- C.** The Contractor shall retain the Project Records related to this Contract for the periods required above. The Contractor shall also ensure that the Project Records of all Subcontractors and Suppliers at all tiers shall be retained and open to similar inspection or audit for the periods required above by incorporating the provisions of this Audit Paragraph into any agreements with Subcontractors or Suppliers related to this Contract.
- D.** The Contractor, its Subcontractors and Suppliers shall make a good faith effort to cooperate with the Port and its designees when the Port gives notice of its need to inspect or audit Project Records. Cooperation shall include assistance as may be reasonably required in the course of inspection or audit, including access to personnel with knowledge of the contents of the records being inspected or audited so that the information in the records is properly understood by the persons performing the inspection or audit. Cooperation shall also include establishing a specific mutually agreeable timetable for making the records available for inspection by the Port and its designee. Unless otherwise agreed, if the Contractor, its Subcontractors and Suppliers cannot make at least some of the relevant records available for inspection within fourteen (14) days of the Port's written request, cooperation will necessarily entail providing the Port with a reasonable explanation for the delay in production of records. Failure to cooperate may impact future evaluation and determination of Requests for Change Order and Claims.

- E.** The Contractor agrees that no Claim shall be made against the Port for the Work described herein unless the Contractor makes available to the Port all documents and records. Failure to maintain and retain sufficient Project Records to allow the Port to verify all costs or damages or failure to permit the Port or its designee access to the Project Records shall constitute a waiver of the rights of the Contractor, Subcontractor, and Supplier to claim or be compensated for any damages, additional time or money under this Contract and shall bar any recovery thereunder.
- F.** Inspection, audit, or copying of Project Records may be performed by the Port or its designee at any time with not less than fourteen (14) days written notice; provided however, if an audit is to be commenced more than sixty (60) days after Final Acceptance of the Contract, the Contractor will be given thirty (30) days' notice of the time when the audit or inspection is to begin.
- G.** The Contractor and its Subcontractors and Suppliers shall provide adequate facilities, acceptable to the Port, for inspection, auditing, or copying during normal business hours.
- H.** No additional compensation will be provided to the Contractor, its Subcontractors, or Suppliers for time or money spent in complying with the requirements of this Audit Paragraph. If the Contractor is formally dissolved, assigns or otherwise divests itself of its legal capacity under this Contract, then it shall notify the Port and preserve all Project Records, at its expense, as directed by the Port.
- I.** This Audit Paragraph shall survive for six (6) years after the termination or expiration of this Contract, or conclusion of all Claims, audits or litigation, whichever occurs later.
- J.** At a minimum the following documents shall be considered Project Records and made available for inspection, auditing and copying:

  - 1. Daily time cards or time sheets and daily reports, inspection reports, and supervisor's reports.
  - 2. Collective Bargaining Agreements governing the base wages and benefits paid to or on behalf of those employees on the project as well as any invoice or payment documentation summarizing the amounts paid to the unions by the employer for those employees working on the project.
  - 3. Insurance, welfare, and benefits records.
  - 4. Payroll registers.
  - 5. Earnings records.
  - 6. All relevant tax forms and records, including any state and federal payroll tax rate schedules governing the employer's payroll tax rates paid on behalf of employees that work on the project and any payroll tax forms summarizing the amounts paid.
  - 7. Material invoices and requisitions.
  - 8. Material cost distribution worksheets.
  - 9. Equipment records (including a list of company-owned equipment and an equipment distribution report containing equipment descriptions, equipment number, equipment rates, recorded equipment hours, phase or cost codes, dates, and any other relevant information as related to how equipment was recorded to the project).
  - 10. Vendors' rental agencies', Subcontractors', and lower tier subcontractors' invoices.

11. Contracts, purchase orders and agreements between the Contractor and each of its Subcontractors, and all lower tier subcontractor contracts and supplier contracts.
12. Subcontractor' and lower tier subcontractors' payment certificates/payment applications.
13. Canceled checks (payroll and vendors).
14. Job cost reports, including both a job cost summary report comparing budgeted amounts to recorded amounts by cost type and phase (or cost code) and a job cost history/detail/transaction report listing each individual transaction by phase (or cost code).
15. General Ledger.
16. Cash disbursements journal.
17. Financial statements for all years reflecting the operations on this Contract. In addition, the Port may require, if it deems appropriate, additional financial statements for three years preceding execution of the Contract and three years following Final Acceptance of the Contract.
18. Depreciation records on all company equipment whether these records are maintained by the company involved, its accountant, or others.
19. If a source other than depreciation records is used to develop costs for the Contractor's internal purposes in establishing the actual cost of owning and operating equipment, all such other source documents.
20. All documents which relate to each and every claim together with all documents that support the amount of damages to each claim.
21. Bid Documentation.
22. Take off sheets, calculations, quotes, and other financial data to support change proposals, request for change order or claims.
23. Worksheets or software used to prepare the Claim establishing the cost components for items of the Claim including but not limited to labor, benefits and insurance, materials, equipment, Subcontractors, Suppliers, all documents which establish time periods, individuals involved, the hours for the individuals, and the rates for the individuals.
24. Worksheets, software, and all other documents used (a) by the Contractor to prepare its bid and schedule(s) or (b) to prepare quotes and bids to the Contractor.
25. All schedule documents, including man-loaded schedules, work plans, planned resource codes, phasing documents and summaries.
26. All other documents, including email, related to the Project, Claims, or Change Orders.
27. Any documentation or information relied upon for the purposes of translating the bid amounts to original budget amounts.
28. Original budget and updated budgets used for tracking job performance throughout the project.

- 29. Labor distribution reports summarizing straight time, overtime, and double time by employee and also separately summarizing base wage amounts versus labor burden and benefit amounts.
  - 30. Copies of all draft and approved change orders including any supplementary documentation or information relied upon for the purposes of pricing the change orders.
- K.** To the extent any of the above-referenced records exist in machine-readable format, Contractor shall make them available in that form. This requirement specifically includes (but is not limited to) an obligation to provide the information and access thereto in the native format in which it is maintained by Contractor. The Contractor shall, as reasonably requested by the Port, provide read-only access to and reasonable technical support necessary to make use of any enterprise or legacy software utilized by the Contractor to manipulate or store the relevant data.

#### **G-04.39 JOINT VENTURE CONTRACTOR**

In the event the Contractor is a joint venture of two or more partners, all rights and responsibilities of the Contract shall be joint and several. Any notice, order, direction, request, or communication given by the Port to the Contractor under this Contract shall be considered given to all joint venture partners if given to any one or more of such joint venture partners. Any notice, request or other communication given to the Port by any joint venture partner shall be deemed to have been given by, and shall bind, all joint venture partners. In the event of the dissolution of the joint venture Contractor, the Port shall have the unqualified right to select which joint venture partner(s), if any, shall continue with the Work under this Contract. Such selected partner(s) shall assume all liabilities, obligations, rights, and benefits of the Contractor under this Contract. Dissolution of the joint venture shall not be effected without prior consultation with the Port. In the event of failure or inability of any joint venture partner(s) to continue performance under this Contract, the remaining joint venture partner(s) shall perform all services and Work and assume all liabilities, obligations, rights, and benefits of the Contractor under this Contract. Nothing in this Paragraph shall be construed or interpreted to limit the Port's rights under this Contract or by law to determine whether the Contractor or any joint venture partner thereof has performed within the terms of this Contract.

### **ARTICLE G-05** **CHANGES**

#### **G-05.01 THE PORT MAY MAKE CHANGES**

- A.** Without invalidating the Contract and without notice to the Surety, and at any time during the progress of the Work, the Port may by Change Order make changes in the Work, which changes include but are not limited to the following:
- 1. Increases or decreases in quantities of Work;
  - 2. Deletion or alteration of any portion of the Work;
  - 3. Changes in design or specifications; and
  - 4. Addition of new Work.
- B.** All such changes in the Work shall be authorized and directed by Change Order. The Change Order shall provide for any increase or decrease in the Contract Time or Contract Sum caused by such change and such increase or decrease may at the Port's option be

stated on a Lump Sum basis, a Not to Exceed basis, a Force Account basis or otherwise. The Contract Sum and Contract Time may be changed only by Change Order. If the Contractor fails to fully comply with Paragraph G-04.34 and this Article G-05, any Request for Change Order or Claim for an increase in the Contract Sum or extension of the Contract Time on account of changes in the Work is waived.

- C.** Upon receipt of the Change Order from the Port, the Contractor must proceed with the changed work whether or not Contractor elects to protest the Change Order. In addition, upon receipt of the Change Order, the Contractor has three options as described in greater detail below in Paragraph G-05.01.D, E and F: (1) sign and return the Change Order to the Port within no more than seven (7) days; (2) make no response, in which case the Change Order issued by the Port automatically becomes a part of the Contract and a mutually binding obligation of the Parties as of the eighth (8th) day after its receipt by the Contractor; or (3) submit a properly documented Notice of Event in accordance with Paragraph G-05.02 in the event Contractor disagrees with any part of the Change Order. Notwithstanding the foregoing, in the event that Contractor is issued a not-to-exceed Change Order (where the Work is to be performed on a Force Account basis) and Contractor's sole point of disagreement is the not-to-exceed amount, Contractor shall not be required to submit a Notice of Event in order to document its disagreement with that not-to-exceed amount, it being understood the execution of a not-to-exceed Change Order does not represent an affirmation or agreement that the changed Work can necessarily be performed within the not-to-exceed amount.
- D.** If the Contractor agrees to the terms and conditions of the Change Order issued by the Port, including any adjustment in the Contract Time or Contract Sum, the Contractor shall sign and return the Change Order to the Port within seven (7) days of its issuance by the Port. Such Change Orders once signed by both the Port and Contractor shall represent full and complete payment and final settlement of all changes, Claims, damages or costs for all (a) time; (b) direct, indirect, and overhead costs; (c) profit; and (d) any and all costs or damages associated with delay, inconvenience, disruption of Schedule, impact, ripple effect, loss of efficiency or productivity, acceleration of work, lost profits, stand-by, and any other costs or damages related to any work either covered or affected by the Change Order, or related to the events giving rise to the Change Order.
- E.** If the Contractor makes no response to the Change Order within seven (7) days after its issuance by the Port, the Change Order automatically becomes part of the Contract as of the eighth (8th) day from its issuance by the Port. Without limiting the foregoing, a Change Order incorporated into the Contract pursuant to this Paragraph G-05.01.E shall be full payment and final settlement of all Claims for an extension of Contract Time or adjustment to the Contract Sum, including costs of delay, related to any Work either covered or affected by the Change Order. By not responding to the Change Order, the Contractor waives any additional entitlement and accepts from the Port all of the terms and conditions itemized in the Change Order.
- F.** If the Contractor disagrees with any part of the Change Order issued by the Port, including the adjustment (if any) to the Contract Sum and the extension (if any) to the Contract Time, the Contractor shall within seven (7) days of its issuance by the Port submit a properly documented Notice of Event in accordance with Paragraph G-05.02.B and shall thereafter comply with the applicable provisions of Paragraph G-05.02.C. Failure to comply with Paragraph G-05.02.B or C shall constitute a waiver by Contractor of any disagreement with the terms or conditions of the Change Order and shall forever bar Contractor from seeking or obtaining any adjustment to the Contract Sum or extension of

Contract Time, whether by a Request for Change Order or Claim, related in any way to the Work described in the Change Order.

- G.** When a Contractor elects to exercise its right to protest the terms of a Change Order within seven (7) days of its issuance as provided for in Paragraph G-05.01.F, the Port will – consistent with the requirements of Article G-08 related to payment – proceed with payment to the Contractor of the undisputed part of the compensation for the Change Order. Unless otherwise agreed in writing by the Port and the Contractor, the undisputed compensation for the Change Order shall be equal to the sum stated by the Port in the Change Order on a Lump Sum or Not To Exceed basis. The Contractor may begin to bill the Port for the undisputed part of the Change Order compensation in the next regular Progress Payment cycle based on the progress of the Work at issue in the Change Order. Provided Contractor has filed a timely and properly documented Notice of Event protesting the remaining parts of the Change Order, Contractor's receipt of payment on the undisputed compensation for the Change Order shall not constitute a waiver by the Contractor of its rights or remedies to obtain an adjustment to the Contract Sum or an extension of the Contract Time in accordance with Paragraph G-05.02 for the disputed part of the Change Order.

**G-05.02 NOTICE OF EVENT; REQUEST FOR CHANGE**

- A.** General. As set forth in Paragraph G-04.34, the Contractor must provide Notice of Event if the Contractor encounters, experiences or suffers any Event that may entitle it to an adjustment of the Contract Sum, an extension of the Contract Time or any other relief related to his Contract. This Paragraph G-05.02 outlines the two step process (G-05.02.B and C) the Contractor must comply with in order to preserve and not waive its right to seek an adjustment to the Contract Sum, an extension of Contract Time or any other remedy or relief due to the occurrence of any Event.
- B.** Notice of Event. The Contractor shall provide the Engineer with a written Notice of Event no later than seven (7) days after the occurrence of the Event giving rise to a potential Request for Change Order, provided, however, that if the Event is an alleged Differing Site Condition or an alleged Impact to Unchanged Work, Contractor shall comply with Paragraphs G-05.02.E and G-05.02.F, respectively, in addition to the other provisions of this Paragraph G-05.02. The Contractor shall include the following information in the Notice of Event:
1. A description of the Event and when it occurred;
  2. Reasonable order of magnitude estimate of the change to the Contract Sum whether to execute the changed work itself or due to the cost of any Impact to Unchanged Work;
  3. Reasonable order of magnitude estimate of the impact to the Contract Time; and
  4. Grounds demonstrating why the Event is the Port's responsibility, including any applicable Contract provisions.

In the event that Contractor is submitting a Notice of Event claimed by any Subcontractor, Sub-subcontractor, or Supplier, Contractor shall specifically review the Notice of Event provided by the Subcontractor, Sub-subcontractor, or Supplier to ensure that it fully complies with the requirements of this Paragraph.

- C.** Request for Change Order. Within thirty (30) days after the Event giving rise to the Notice of Event, unless the Engineer issues written notice authorizing the Contractor additional

time to submit the Request for Change Order, the Contractor shall provide, in writing, a detailed Request for Change Order. The Request for a Change Order shall include:

1. A full discussion of the circumstances which caused the Event, including names of persons involved, time, duration and nature of the Work involved, and review of the Contract Documents to support the Request for Change Order;
2. A Time Impact Analysis (TIA) of the Schedule showing the change or disruption if the Contractor is asserting a Schedule change or disruption;
3. Specific dollar amount covering all costs, direct and indirect (including costs due to any Impact to Unchanged Work) associated with the Request for Change Order calculated in accordance with Paragraph G-05.04; and
4. All documentation supporting the Request for a Change Order, including but not limited to all cost records.

In the event that Contractor is submitting a Request for Change claimed by any Subcontractor, Sub-subcontractor, or Supplier, Contractor shall specifically review the Request for Change provided by the Subcontractor, Sub-Subcontractor, or Supplier to ensure that it fully complies with the requirements of this Paragraph. This review shall specifically include, but not be limited to, the appropriate calculation of markups as the same may be allowed by Paragraphs G-05.04 and G-08.05 and the inclusion of all required supporting documentation.

- D.** Port's Response to Contractor's Request for Change Order. The Port will make a written determination with respect to the Contractor's Request for Change Order within thirty (30) days of receipt of said Request, unless one of the following activities occurs:
1. The Port may request additional information and specify a time period for receipt of the information. The Contractor shall comply with the Port's request for additional information.
  2. The Port may inform the Contractor that additional time is needed to review the Contractor's Request for Change Order and identify a date certain when a decision will be rendered.
  3. If the Port requests additional information, the Port will make a written determination within thirty (30) days receipt of Contractor's additional information.

If the Port does not make a determination within the applicable time period (as the same may be extended), the Request For Change Order is deemed denied.

- E.** Differing Site Condition. If the Contractor encounters (a) subsurface or latent physical conditions at the site differing materially from those indicated in the Contract Documents and, when considered in context (specifically including the lapse of time and any subsequent activity), the Reference Documents or (b) unknown physical conditions of an unusual nature at the site differing materially from those ordinarily encountered and generally recognized as inherent in the Work of the character provided for in the Contract, the Contractor shall provide the Port oral or written notice promptly (and in no event more than 24 hours after discovery) and before the conditions are disturbed (for convenience in this paragraph, the "Initial Notice"). This deadline for the submission of this Initial Notice related to an alleged Differing Site Condition is in addition to (and not in lieu of) the seven (7) day deadline described in Paragraph G-05.02. If such Initial Notice of Event is not given prior to the condition being disturbed (or other action being taken by the Contractor which may result in a claim for an increase in the Contract Time or the Contract Sum), or such condition is disturbed before the Port directs the Contractor to proceed with the Work



despite the condition, the Contractor will be deemed to have waived any claim for extra compensation or extension of the Contract Time (including labor, material and equipment) incurred because of such condition. The Initial Notice of Event may be provided by email.

1. After submission of the Initial Notice, the Contractor shall thereafter comply with the Request for Change Order process described in Paragraph G-05.02.B and C. After receipt of the Request for Change Order, the Port will respond in accordance with the time limits set forth in Paragraph G-05.02.D. If the Port and the Contractor agree on such adjustment, the same shall be set forth in a Change Order to be executed by both parties.
2. If all or part of Contractor's Request for Change is denied or deemed denied, but the Contractor believes it does have merit, the Contractor must submit a Claim in accordance with Paragraph G-09.01 if it wishes to preserve its right to seek any adjustment to the Contract Sum or Contract Time.

**F.** Impact to Unchanged Work. If the Contractor encounters an Event that has the potential or actual ability to cause an Impact to Unchanged Work, the Contractor shall (in addition to providing the Notice of Event under Paragraph G-05.02.B and the Request for Change Order under G-05.02.C) comply with the terms of this Paragraph G-05.02.F.

1. In the event the Contractor cannot (in spite of reasonable best efforts) accurately quantify the cost of an Impact to Unchanged Work within the time periods prescribed for the Notice of Event or the Request for Change, the Contractor shall provide the Port (as detailed below) with an effective opportunity to mitigate the costs of the alleged Impact to Unchanged Work whether through acceleration, deletion of the changed Work or otherwise.
2. In order to provide the Port with such opportunity, the Contractor shall first provide the Port a detailed written evaluation of how the Event may cause an Impact to Unchanged Work (with a description of the trades or Work expected to be impacted and the expected date(s) of the impact) and how the Contractor is proactively taking steps to mitigate any such cost or impact. This evaluation and description shall be submitted no later than the deadline for the Request for Change Order under Paragraph G-05.02.C.
3. In addition, if and as soon as the cost incurred by Contractor (or any Subcontractor) due to Impact to Unchanged Work exceeds ten percent (10%) of Contractor's (or any Subcontractor's) bid-time estimate of the cost to perform such Work in the absence of the impact (the "unimpacted estimate"), the Contractor shall notify the Port in writing that such unimpacted estimate has been exceeded by such percentage. For clarity, the obligation in this Paragraph 5.02.F. specifically applies to costs incurred by Contractor and each of its Subcontractors; as soon as the cost incurred by Contractor or any of its Subcontractors exceeds ten percent of their respective unimpacted estimate, notice shall be required. This additional notice shall be provided as soon as reasonably possible and in no event more than seven (7) days after the cost incurred exceeds the unimpacted estimate.
4. If the Contractor fails to provide such written notice of the estimate overrun, the Port's liability for any Impact to Unchanged Work shall be capped at ten percent (10%) of the unimpacted estimate for the impacted work activity and any costs incurred in excess of this cap are solely at the risk of the Contractor.

**G.** Contractor Procedure upon Denial or Deemed Denial of a Request for a Change Order. If the Contractor disagrees with the denial or deemed denial of a Request for Change Order,

the Contractor's sole remedy shall be to file a fully documented Claim in compliance with Article G-09.

- H.** Contractor's Obligation to Continue to Work. Pending resolution of the Contractor's Request for Change Order, the Contractor shall continue to perform all Work including, at the written request of the Port the work associated with the pending Request for Change Order. The Contractor shall maintain its progress with the Work.
- I.** Waiver. Failure to follow the provisions set forth herein shall constitute a waiver of the Contractor's right to receive any extension of the Contract Time, any adjustment to the Contract Sum or any other relief or remedy of any kind as a result of any Event.
- J.** Any Request for Change Order that is approved by the Port will be incorporated into a Change Order.

#### **G-05.03 REQUESTS FOR PROPOSAL**

- A.** In connection with a possible or proposed change, the Port may request that the Contractor submit a proposal from the Contractor and Subcontractors or provide other information to the Port. The Contractor will submit such proposal or other information in a form and within the time period requested by the Port.
- B.** If failure by the Contractor to respond in a complete and timely manner delays the completion of the Work, such delay is the responsibility of the Contractor.
- C.** The Contractor's proposal shall include detailed price calculations for the proposed change, which shall specify the quantities, hours, rates, and costs of all labor, material, and equipment for the Work and the same detail for Subcontractors at any tier utilizing the requirements established in the Table of Cost Categories and Markups. A request by the Port to the Contractor for a proposal shall not constitute authorization for the Contractor to proceed with any such proposed change in the Work, nor shall such request justify any delay in the performance of existing Work.
- D.** If the Port and Contractor have agreed on the terms of a negotiated Change Proposal, the negotiated Change Proposal will be executed as a Change Order and shall represent full and complete compensation and final settlement of all (1) time; (2) direct, indirect, and overhead costs; (3) profit; and (4) costs or damages associated with delay, inconvenience, disruption of Schedule, impact, ripple effect, loss of efficiency or productivity, acceleration of work, lost profits, or any other costs or damages related to any work either covered or affected by the Change Proposal, or related to the events giving rise to the Change Proposal.
- E.** If the Port and Contractor are unable to agree on the terms of a Change Order for the Work contemplated by the Change Proposal, the Port may at its option issue a Change Order for the contemplated new Work and, upon receipt of the Change Order, the Contractor will have the right to exercise one of the three options identified in Paragraph G-05.01.C.
- F.** The sums paid by the Port in connection with any given Change Order or Change Proposal (including any sums paid for alleged impact, inefficiency or disruption) will only apply to that given Change Order or Change Proposal and will not set a precedent for future Change Orders or Change Proposals. Sums paid for future Change Orders or Change Proposals will be determined on an individualized and discrete basis.

**G-05.04      COMPENSATION FOR CHANGES**

- A.** General. Changed Work under this Contract will be measured for payment in accordance with this Paragraph G-05.04 as Unit Price Work, as Lump Sum Work or as Force Account Work.
1. "Unit Price Work," as used in this Paragraph, refers to Work for which a unit price is established in the Contract's Schedule of Prices or by Change Order.
  2. "Bid quantity," as used in this Paragraph, means the total unit quantity listed in the Schedule of Prices for an item of Unit Price Work.
- B.** Changes in the Quantity of Unit Price Work. Where the nature of the changed Work does not differ materially from Work which is Unit Price Work, the change shall be measured and paid for (or credited) at the established unit prices, subject to the following exceptions:
1. Where quantity is less than 75%. If the quantity of an item of Unit Price Work actually performed or to be performed is less than 75% of the bid quantity, for that portion of quantity that is less than 75% of the bid item the Contractor may request or the Port may issue a Change Order revising the unit price for the item. Such request shall be accompanied by evidence to support the requested revision. The proposed revision will be evaluated by the Port considering such factors as the changes in actual costs to the Contractor of the item, and the share, if any, of fixed expenses properly chargeable to the change in quantity of that item. In any event, the total cost for the work shall not be more than 75% of the bid quantity for that item. The Contractor shall not be compensated for lost profit associated with the work not performed. If the Port and the Contractor agree on the change to the Unit Price, a Change Order will be executed. If the parties cannot agree, the Port may nevertheless issue the Change Order pursuant to Article G-05, and the Contractor will have the rights provided in Paragraph G-05.02.
  2. Where quantity is more than 125%. If the quantity of an item of Unit Price Work actually performed or to be performed is more than one hundred twenty five percent (125%) of the bid quantity for that item, the Contractor or the Port may request a Change Order revising the unit price for that portion of the Work that exceeds 125% of the bid quantity. Such request shall be accompanied by evidence to support the requested revision. The proposed revision will be evaluated considering such factors as the change in actual cost to the Contractor of that portion of the work exceeding 125% of the bid quantity, and the share, if any, of fixed expenses properly chargeable to that portion of change in quantity which exceeds 125% of the bid quantity. If the Port and Contractor agree on the change to the Unit Price, a Change Order shall be executed in accordance with Paragraph G-05.01. If the parties cannot agree, the Port may nevertheless issue a Change Order pursuant to Paragraph G-05.01 and the Contractor will have the rights provided in Paragraph G-05.02.
- C.** Administration of Unit Price Changes.
1. Unless explicitly directed otherwise in writing by the Engineer, Contractor is – without the need for or issuance of a Change Order – expressly authorized to perform and install Unit Price quantities in excess of 125% of the bid quantity, all to the extent necessary for the successful completion of the Work in a manner consistent with the standards set forth in Paragraphs G-02.01 and G-02.02. Notwithstanding the foregoing, the performance or installation of Unit Price quantities over 125% of the bid quantity shall constitute an Event. In the event that

the Contractor seeks any adjustment in the amount for Unit Price Work in excess of 125% of the bid quantity for that item, it shall provide a Notice of Event in compliance with Paragraphs G-04.34 and G-05.02. The Port shall have a reasonable period of time following notice from the Contractor that it has exceeded 125% of the bid quantity to determine whether to request a Change Order revising the unit price for that portion of the Work that exceeds 125% of the bid quantity. In the absence of a Change Order that makes adjustment to the unit price for that portion of the Work that exceeds 125% of the bid quantity, the overrun will generally be managed as an administrative matter in connection with requests for Progress Payments, but the Port shall have the right to require a reconciling Change Order to conform the Contract to the actual unit quantity.

2. In order to assist the Port in managing the cost of Unit Price work, Contractor shall also notify the Port in writing when its performed/installed quantity of any given Unit Price item equals 100% of the Bid quantity.

**D. Changes to Work Other than Unit Price Work.**

1. Additional Work: If no unit price has been established for Work added to the Contract by the Port, the Port has the option of (a) attempting to reach agreement as to the Lump Sum increase or decrease, if any, in the Contract Sum and the Contract Time caused by such change or (b) directing that the changed work be executed on a Force Account basis. The Engineer may require, prior to approval of such Change Order, that the Contractor submit a proposal detailing the information identified in Paragraph G-05.03. If the Port and Contractor agree on the Lump Sum change, a Change Order will be issued by the Port and signed by the Contractor. Such Change Order shall be final and no increase in the Contract Sum or Contract Time for such change shall be allowed beyond that stated in the Change Order. Markup(s) as referenced in Paragraph G-08.05 (Table of Cost Categories and Markups) shall be used. The Port may issue a Change Order on a Force Account basis and the Contractor will have the rights provided in Paragraph G-05.02.
2. Deleted Work. If the Port elects to delete all or a portion of the Work, the Engineer shall so advise the Contractor in writing, and the Contract Sum shall be decreased in an amount determined as follows:
  - a. The deducted value will be based upon the applicable unit price, or if there is no such unit price applicable to the deleted Work, the deducted value will be a Lump Sum agreed upon in writing by the Contractor and the Port based on cost information submitted by the Contractor or otherwise obtained by the Port. In the event no agreement can be reached, the Port shall be entitled to a deduction based on its reasonable determination of the fair market value of the deleted Work at the time of the bid, provided that if the Contractor disagrees with amount of the deduction, it may submit a Notice of Event and pursue a Request for Change Order under Paragraph G-05.02. The amount allowed for markups shall be determined in the same manner as if the deleted Work was to be performed on a Force Account basis pursuant to Paragraph G-08.05. The Port may then issue a Change Order pursuant to Paragraph G-05.01 and the Contractor shall have rights provided in Paragraph G-05.02.
  - b. Acceptable materials ordered by the Contractor or delivered prior to the date the Contractor was notified to delete the Work may, at the Port's

option, be purchased from the Contractor at the Contractor's actual cost and thereupon become the property of the Port, or the Port will reimburse the Contractor for its actual, out-of-pocket costs connected with returning such materials to the Suppliers.

- c. No amount will be paid to the Contractor for any anticipated or estimated profit that the Contractor could or would have earned if the deleted Work had been performed.
- 3. Added and Deleted Work. In the event a change in the Work requested by the Port or proposed by the Contractor involves both the addition and deletion of Work, the same rates (labor, equipment, material, markup) will be used to price both the addition and the credit unless the Contractor can demonstrate to the Port's satisfaction that it would be unreasonable to use the same rates.

#### **G-05.05 VALUE ENGINEERING CHANGE PROPOSALS (VECPs)**

- A. The Port encourages the Contractor to submit Value Engineering Change Proposals (VECPs) in order to avail the Port of potential cost or time savings or increased safety during construction. The Contractor and the Port will share any savings in accordance with this Paragraph. VECPs may be submitted at any time after the Contract Execution Date. A proposal merely to delete or reduce scope of Work does not constitute a VECP.
- B. The Contractor shall submit VECPs directly to the Engineer. As a minimum, the following information shall be submitted by the Contractor with each VECP:
  - 1. Description of the existing Contract requirements that are involved in the proposed change;
  - 2. Description of the proposed change;
  - 3. Discussion of differences between existing requirements and the proposed change, together with advantages and disadvantages;
  - 4. Itemization of the Contract requirements that shall be changed if the VECP is accepted (e.g., drawing numbers and specification);
  - 5. Justification for changes in function or characteristics of each affected item, and effect of the change on performance of the end item;
  - 6. Effect of proposed change on life-cycle costs, including operation, maintenance, replacement costs, and life expectancy;
  - 7. Date or time by which a Change Order adopting the VECP shall be issued in order to obtain the maximum cost reduction, noting any effect on contract completion time or delivery schedule; and
  - 8. Cost estimate for existing Contract requirements correlated to the Contractor's unit price or lump sum breakdown and the proposed changes in those requirements.
  - 9. Costs of development and implementation by the Contractor shall be provided.
  - 10. Additional costs to the Port (e.g., costs of testing, redesign, and effect on other contracts) shall also be estimated.
- C. The Port retains the right to reject a VECP without review and without recourse by the Contractor if in the Port's sole opinion, the potential savings are unlikely to justify the cost of the review or if the proposed change is otherwise unacceptable to the Port.

- D.** The Port will expeditiously process VECPs accepted for review and may accept, in whole or in part, by Change Order, any VECP submitted pursuant to this Paragraph. Until a change order to proceed is issued identifying the VECP to which it applies, the Contractor shall remain obligated to perform in accordance with this Contract. The Port's decisions as to acceptance or rejection of any VECP shall be at the Port's sole discretion and shall be final and not subject to review by any dispute resolution process or otherwise.
- E.** If a VECP submitted by the Contractor pursuant to this Paragraph is accepted, the Contract Sum shall be reduced by an amount equal to 50 percent of the Estimated Net Savings (ENS) to the Contractor plus 50 percent of the Port's Review Costs (or the reduction =  $0.5\text{ENS} + 0.5 \text{ Review Costs}$ ). The Estimated Net Savings shall be calculated by subtracting the Contractor's Costs from the Contractor's Estimated Gross Savings. For the purposes of this Paragraph, the Contractor's Costs are defined as the reasonable costs incurred by the Contractor in preparing the VECP and making the change, such as cancellation or restocking charges; and the Contractor's Estimated Gross Savings are defined as the difference between the direct and indirect cost of performing the Work according to the existing requirement and the direct and indirect cost to perform the Work according to the proposed change. The Contractor's profit shall not be considered part of the cost and shall not be reduced by application of the VECP.
- F.** The Contractor shall include appropriate value engineering incentive provisions in all subcontracts of \$100,000 or greater, and may include those provisions in any subcontract. In determining Estimated Net Savings for cost reduction proposals that involve a Subcontractor, only actual costs to the Contractor and Subcontractor, as defined in Subparagraph E above, will be allowed as Contractor Costs. Incentive payments made to the Subcontractor by the Contractor in connection with the cost reduction proposal will not be allowed in determining Net Savings.
- G.** The compensation provisions of this Paragraph shall constitute the Contractor's exclusive and complete compensation for the Port's use of the VECP, and the Contractor shall have no right to additional compensation for future or additional uses of the VECP.
- H.** In the event the Port and Contractor cannot agree on the Estimated Net Savings, the Port may reject the Proposed VECP or accept the Proposed VECP and issue a Change Order identifying the Estimated Net Savings, which Contractor may thereafter protest in accordance with Paragraph G-05.02.

#### **G-05.06 REVIEW OF BID DOCUMENTATION**

- A.** If this Contract requires the escrow of Bid Documentation, the Contractor warrants to the Port that the Bid Documentation submitted in accordance with these requirements represents the complete and accurate information used by the Contractor to prepare its Bid, and that the calculations, rates, and quotations provided therein constitute the basis under which the Contractor bid the Work. The Contractor further warrants that no other Bid Documentation concerning the Contractor's calculation of its Bid shall be utilized by the Contractor during disputes or litigation of Claims brought by the Contractor arising out of this Contract, unless otherwise approved by the Port.
- B.** Bid Documentation may be reviewed and used by the Port to determine the Contractor's bid concept, to evaluate the Contractor's breakdown of the Contract Sum, evaluate productivity and schedule in association with Change Orders, Requests for Change Orders or Claims.

- C.** If the Port elects to obtain access to Bid Documentation, the Port will notify the Contractor and permit the Contractor to obtain equal access. By mutual agreement between the Port and the Contractor, the Port may copy the Bid Documentation and provide the working copies to the Port personnel, agents or consultants. The Port, its agents and consultants may maintain such working copies of the Bid Documentation and, at the request of the Engineer, all copies of the Bid Documentation will be returned to the Port. The Contractor's authorized representative shall access the Bid Documentation only in the presence of an authorized Port representative. The Contractor shall notify the Engineer at least seven (7) days prior to the desired date to schedule such access.
- D.** If a Disputes Resolution Board or mediator is used to resolve disputed Claims, the Board members or mediator shall have unrestricted use and access to the Bid Documentation for purposes of evaluating, understanding, resolving and settling Claims. The Dispute Resolution Board or mediator shall maintain submitted documents in a secure location, marked confidential and proprietary, and shall return said documents to the Port at the conclusion of the hearing or mediation process.
- E.** If the Contractor fails to fully meet the requirements of this Paragraph and later presents a Claim to the Port for additional compensation or time extension, such failure to fully comply with said requirements shall act as a waiver of all Claims made.
- F.** In the event that the Port receives a public disclosure request under Washington's Public Records Act, Chapter 42.56 of the Revised Code of Washington, for any portion of Contractor's Bid Documentation before such time as the Port has reviewed the portion of Bid Documentation under this Paragraph G-05.06 (i.e. while the portion remains in escrow), the Port will provide Contractor notice of such request. In the event that the Port receives a public disclosure request for any portion of the Contractor's Bid Documentation after such time as the Port has reviewed the portion of Bid Documentation under this Paragraph G-05.06 (i.e. after the portion has been released from escrow and used by the Port), the Port will reasonably endeavor to provide Contractor notice of such request where it is reasonably clear the Bid Documentation is within the materials otherwise subject to production (e.g. clearly marked as confidential Bid Documentation on the face of a document included in a change order file) but does not commit to do so. Contractor shall be responsible for and bear the costs of taking legal action in an attempt to prevent disclosure of such documents. In no event shall the Port be liable to Contractor for disclosure of Contractor's documents the Port deems disclosable under the Public Records Act.
- G.** The rights, responsibilities and warranties of this Paragraph G-05.06 shall apply equally to any Subcontractor that is required, by terms of the Contract Documents, to escrow its Bid Documentation.

#### **G-05.07 PUBLIC DISCLOSURE REQUEST OF PORT**

In the event that the Contractor, any Subcontractor, or Supplier submits to the Port a request for public disclosure under Washington's Public Records Act, Chapter 42.56 of the Revised Code of Washington, related to this Contract, any conduct of the Port related to this Contract, or any other contract that Contractor, its Subcontractor, or Suppliers submits may have bearing on this Contract, the Port shall – in addition to, and not in lieu of, any rights otherwise granted under this Contract – have the right to require Contractor and any of its Subcontractors or Suppliers to produce similar records, whether or not otherwise within the scope of Project Records or the Port's audit rights under Paragraph G-04.38. Compliance with this obligation shall not, however, be a condition or limitation on the Port's obligation to comply with its obligations under the Public

Records Act. Instead, Contractor's failure to comply with the obligation imposed by this Paragraph within a manner and period of time that is comparable to the Port's compliance with its obligation under the Public Records shall be considered a failure to provide documentation relevant to a pending Request for Change Order or Claim that will constitute a waiver of Contractor's right to receive an extension of the Contract Time, an adjustment to the Contract Sum or any other relief or remedy of any other kind. The specific purpose of this Paragraph is not to limit Contractor's right to make a public records request or penalize Contractor for doing so, but rather to ensure parity in the information held by the Port and Contractor, its Subcontractors, and Suppliers in the consideration of Request for Change Orders and resolution of Claims.

## **ARTICLE G-06**

### **NON-DISCRIMINATION AND EQUAL EMPLOYMENT**

#### **G-06.01 COMPLY WITH ALL LAWS**

During the performance of this Contract, the Contractor, for itself, its assignees, and successors in interest agrees to comply with the following non-discrimination statutes and authorities; including but not limited to:

1. Title VI of the Civil Rights Act of 1964 (42 U.S.C. § 2000d *et seq.*, 78 stat. 252), (prohibits discrimination on the basis of race, color, national origin) and 49 CFR part 21;
2. The Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, (42 U.S.C. § 4601), (prohibits unfair treatment of persons displaced or whose property has been acquired because of Federal or Federal-aid programs and projects);
3. Section 504 of the Rehabilitation Act of 1973, (29 U.S.C. § 794 *et seq.*), as amended, (prohibits discrimination on the basis of disability); and 49 CFR part 27;
4. The Age Discrimination Act of 1975, as amended, (42 U.S.C. § 6101 *et seq.*), (prohibits discrimination on the basis of age);
5. Airport and Airway Improvement Act of 1982, (49 USC § 471, Section 47123), as amended, (prohibits discrimination based on race, creed, color, national origin, or sex);
6. The Civil Rights Restoration Act of 1987, (PL 100-209), (Broadened the scope, coverage and applicability of Title VI of the Civil Rights Act of 1964, The Age Discrimination Act of 1975 and Section 504 of the Rehabilitation Act of 1973, by expanding the definition of the terms "programs or activities" to include all of the programs or activities of the Federal-aid recipients, sub-recipients and contractors, whether such programs or activities are Federally funded or not);
7. Titles II and III of the Americans with Disabilities Act, which prohibit discrimination on the basis of disability in the operation of public entities, public and private transportation systems, places of public accommodation, and certain testing entities (42 U.S.C. §§ 12131 – 12189) as implemented by Department of Transportation regulations at 49 CFR parts 37 and 38;
8. The Federal Aviation Administration's Non-discrimination statute (49 U.S.C. § 47123) (prohibits discrimination on the basis of race, color, national origin, and sex);



9. Executive Order 12898, Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations, which ensures discrimination against minority populations by discouraging programs, policies, and activities with disproportionately high and adverse human health or environmental effects on minority and low-income populations;
10. Executive Order 13166, Improving Access to Services for Persons with Limited English Proficiency, and resulting agency guidance, national origin discrimination includes discrimination because of limited English proficiency (LEP). To ensure compliance with Title VI, you must take reasonable steps to ensure that LEP persons have meaningful access to your programs (70 Fed. Reg. at 74087 to 74100);
11. Title IX of the Education Amendments of 1972, as amended, which prohibits you from discriminating because of sex in education programs or activities (20 U.S.C. 1681 et seq.).

#### **G-06.02 COMPLY WITH PORT OF SEATTLE POLICY AND REQUIRED ACTIONS**

The Port has a comprehensive policy regarding equal employment opportunities for minority and women's business enterprises and affirmative action. Pursuant to such policy, the Contractor is required to take certain specific actions, including providing the Port with reports and affidavits in connection with its performance of this Contract. It is the basic policy of the Port of Seattle to provide equal opportunity to users of all Port services and facilities and all contracting entities. Specifically, the Port will not tolerate discrimination against any persons on grounds of age, race, color, national origin/ancestry, ethnicity, religion, disability, Family Medical Leave Act (FMLA) use, pregnancy, sex/gender, sexual orientation, whistle-blower status, marital status, workers' compensation use, transgender status, political beliefs, or any other protected status, as guaranteed by local, state and federal laws. Port's policy and the specific obligations to be performed by the Contractor are set forth in the Contract.

### **ARTICLE G-07 TIME**

#### **G-07.01 CONTRACT TIME**

All time limits stated in the Contract Documents, specifically including the Milestones and the Contract Time, are of the essence of this Contract. While the Engineer may, in certain circumstances, provide a written extension, reduction or waiver of certain time limits, the Milestones and the Contract Time may be extended or reduced only by Change Order. Contractor shall not be entitled to receive delay damages or other, similar costs associated with any failure to realize early completion of the Work (even if set forth in the Schedule) before the end Contract Time. For purposes of the Schedule, any such early completion will be treated only as an early finish in the Critical Path that otherwise extends through Substantial Completion.

#### **G-07.02 EXTENSIONS OF CONTRACT TIME; COMPENSATION**

- A. Contract Time will only be extended for delays to the Critical Path of the Work. If an extension of Contract Time is warranted under any of the following provisions, the extension of Contract Time will be limited to the period of time the Engineer determines the Critical Path was delayed/extended.

- B.** Reasonable Delays. The Contractor should anticipate that some reasonable delays, including those caused by normal weather patterns, will occur. The Contractor shall not be entitled to any compensation, damages, or extension of the Contract Time for such reasonable delays.
- C.** Non-Excusable and Non-Compensable Delays. Delays in the prosecution of the Work that could have been avoided by the exercise of due care, coordination and diligence on the part of the Contractor, its Subcontractors or its Suppliers at any tier are neither excusable nor compensable under the Contract. No extension of Contract Time or increase in the Contract Sum shall be allowed for any claimed delay that is caused by or results from the breach, fault, negligence, or collusion of the Contractor, or its Subcontractors, Sub-Subcontractors, or Suppliers. Nonexclusive examples of such non-excusable and non-compensable delays include, but are not limited to:

1. Contractor's failure to make timely Submittals to the Port, and
2. Contractor's failure to procure materials or labor or perform the Work in accordance with the requirements of the Contract Time or to adequately plan for such functions.

Non-excusable and non-compensable delays shall potentially subject the Contractor to damages as more specifically set forth in Paragraph G-10.10.

- D.** Excusable and Non-compensable Delays. The Contract Time may be extended without compensation by the Port for a period equivalent to the time that the Engineer determines that the Contractor was delayed in the Critical Path of the Work by one or more of the following causes, beyond the control of the Port and the Contractor, occurring during the performance of the Work:
1. Fire or other casualty for which the Contractor is not at fault or otherwise responsible;
  2. Riot, war, terrorism, or civil disorder;
  3. Unusually Severe Weather;
  4. General industry strikes or labor disputes beyond the reasonable control of Contractor;
  5. Unreasonable delay in issuance of a permit by the agency having jurisdiction as described in Paragraph G-04.12.C; and
  6. Delay to the Critical Path resulting from causes beyond the control of Contractor and Port and that could not have been avoided by Contractor with the exercise of coordination, foresight and diligence.

Such non-compensable extensions of Contract Time will be allowed only to the extent that Substantial Completion of the Work is unreasonably delayed through no fault of the Contractor, which must in all cases be substantiated by impact to the Critical Path on the Schedule. Any extension of the Contract Time by the Port will be set forth in a Change Order, which shall specify the days by which the Contract Time is to be increased.

- E.** Excusable and Compensable Delays. The Contract Time may be extended and the Contract Sum increased in the event that:
1. The Critical Path was delayed by reason of changes made by the Port or by any unreasonable act or omission of the Port, the Engineer, or any other party for whom the Port is responsible.

2. The Contractor was not concurrently responsible for the Critical Path delay,
3. The Contractor has suffered actual losses as a result of the Critical Path delay,
4. The Critical Path delay could not have been mitigated despite the Contractor taking reasonable work-around actions, and
5. The Critical Path delay was not within the contemplation of the Contract,

In that event, the Contract Time will be extended for a period equivalent to the time that the Engineer determines that the Contractor was delayed in the Critical Path of the Work and the Contract Sum will be increased to compensate the Contractor for its loss from such delay and associated disruption. Any extension of the Contract Time and increase in the Contract Sum by the Port will be set forth in a Change Order, which shall specify the days by which the Contract Time is to be increased and the amount by which the Contract Sum is to be increased.

- F. Notwithstanding any of the foregoing, if the Contractor fails to fully comply with Paragraphs G-04.34 and G-05.02, any claim for an extension of Contract Time or increase in the Contract Sum on account of such claimed delay shall be waived.

## **ARTICLE G-08**

### **PAYMENTS, COMPLETION AND FINAL ACCEPTANCE**

#### **G-08.01 ALL PAYMENTS SUBJECT TO APPLICABLE LAWS**

All payments made to the Contractor under this Contract are subject to all laws applicable to the Port in general and to this Contract in particular. Without limiting the generality of the foregoing, the law does not permit the Port to make any payments to the Contractor under this Contract until proper and approved Statements of Intent to Pay Prevailing Wages have been filed with the Port, as required by Paragraph G-04.06 and Section 39.12.040 of the Revised Code of Washington. In addition, the Port will retain five percent (5%) of all earned payment as required by Section 60.28.011 of the Revised Code of Washington, and the retained amounts shall be deposited as indicated by the Contractor in its Bid.

#### **G-08.02 SCOPE OF PAYMENT**

The Contractor shall be compensated for performing the Work, including any changes made by Change Order, as provided for in this Contract. Payment of the Contract Sum shall constitute the full compensation to the Contractor for performance of the Work, including all risk, loss, damage, or expense of whatever character arising out of the nature of the Work or the prosecution thereof, and for all reasonable expenses properly incurred, including in the event of suspension or termination. The Port will not pay for work done beyond lines and grades established by the Engineer, or extra work or materials furnished without prior written approval of the Engineer. The Port may order such unauthorized work to be removed at no expense to the Port.

#### **G-08.03 PROGRESS PAYMENTS**

- A. Progress Payments will be made no more often than monthly following Contractor's request. Payment shall be based upon invoices approved by the Engineer. All requests for Progress Payments must be accompanied by all required documentation; otherwise, the Progress Payment will not become due or be processed. Unless otherwise revised by the Supplementary Conditions, the Contractor's Progress Payment request shall be made by the 25<sup>th</sup> of each month, based on the percentage of Work completed. Progress Payments

will be made within thirty (30) days after completion of Port review and determination of the amount due. The Port will generally review Contractor's request for Progress Payments and identify any significant issues affecting payment within fourteen (14) days of submission.

- B.** All Progress Payments will be made by Direct Deposit. Contractor shall submit, as a pre-award submittal, the Port of Seattle "Direct Deposit (ACH) Enrollment Form and Agreement" to establish the electronic payment path.
- C.** Payment shall be based upon the actual quantities of Work performed as verified and agreed by the Engineer according to the Contract Documents. For lump sum items, Progress Payments will be determined based upon the percentage of completion against a schedule of values established in accordance with the Contract. Where the Contract provides for unit prices, quantities will be determined by the actual measurement of completed units listed in the Schedule of Prices attached to the Agreement Form. Allowance items may be performed, and will be paid for, only with prior written authorization by the Engineer (typically through a Construction Bulletin). Force Account items will be paid as more specifically set forth in Paragraph G-08.05.
- D.** The Contractor shall promptly submit all Subcontractor or Supplier invoices as part of its monthly Progress Payment requests. The Contractor is likewise required to make payment to all Subcontractors and Suppliers for all Work included within the Progress Payment within ten (10) days from the receipt of the Progress Payment. Furthermore, the Contractor shall require all subcontracts issued under this contract to all Subcontractors and Suppliers at all tiers to also make all due payments within ten (10) days of their receipt of payment. The Contractor must justify to the Port in writing any intent to withhold payment of monies due to any Subcontractor or supplier.
- E.** The Contractor shall supply with each payment request a certification signed by a corporate or company officer. This certification shall attest that all payments by the Contractor due to Subcontractors or Suppliers from the last payment estimate have been made within the ten (10) day payment period. The certification shall attest that the Contractor will make payment within ten (10) days of all obligations due from the current payment estimate. The Contractor is required to receive the same certification from all Subcontractors and Suppliers at all tiers. No Progress Payments will be processed until the Contractor's certification is received.

#### **G-08.04 PAYMENT FOR STORED MATERIALS**

- A.** On-Site Materials: A Progress Payment may include payment for permanent materials or equipment to be incorporated into the Work if approved in advance by the Engineer and properly stored and safeguarded on the Site. To be entitled to a Progress Payment for such materials delivered to the Site but not yet incorporated into the Work, the Contractor's claimed purchase price must be supported by (1) certified invoices of Subcontractors or Suppliers and (2) proof of payment of such invoices in the form of cancelled checks or acknowledgment by such Subcontractors or Suppliers of receipt of payment in full for such invoices.
- B.** Off-Site Materials: A Progress Payment may also include payment for permanent prefabricated materials or specially designed equipment to be incorporated into the Work if approved in advance by the Engineer and properly stored and safeguarded, even though off-site. The maximum allowable payment for such off-site material will be eighty percent of the invoice price for the material. To be entitled to such a Progress Payment for such materials or equipment located offsite, the Contractor's claimed purchase must be

supported by the certified invoices and proofs of payment described above in Paragraph G-08.04.A and, in addition, as a condition precedent to making any such Progress Payment, the Port may require that the Contractor at its expense either (1) furnish the Port with an irrevocable letter of credit on terms acceptable to the Port that the Port shall be entitled to draw on in the event the Contractor fails to deliver the materials or equipment to the Site or (2) provide the Port with a first priority perfected security interest ("Security Interest") in the materials or equipment covered by the payment request pursuant to a written security agreement in the form and substance acceptable to the Port supported by Uniform Commercial Code ("UCC") financing statements describing the subject materials, UCC searches and other terms and conditions acceptable to the Port at its discretion.

- C.** As a condition of making payment for stored materials (whether on-site or off-site), the Port will have the right to inspect the materials before or after making any such payment. In addition, the Port shall have the right to require the Contractor to furnish evidence, reasonably satisfactory to the Engineer, that the Contractor has maintained adequate insurance in the case of materials and equipment stored off-site.

**G-08.05 PAYMENT FOR WORK DONE ON A FORCE ACCOUNT BASIS**

- A.** Whenever, under the terms of the Contract, labor, materials, or equipment are to be paid for on a Force Account basis, the amount of such payment shall be determined as follows (also see Table of Cost Categories and Markups):
1. Labor: For all direct labor, the Contractor shall be paid an amount equal to the sum of the following:
    - a. Weighted Wage Rate: The agreed weighted wage rate for all labor used shall include and be restricted to the actual current certified basic wages earned, plus fringe benefits made the obligation of the Contractor by a collective bargaining agreement or other employment agreement, plus benefits paid on account of such labor by the Contractor pursuant to the:
      - 1) Federal Insurance Compensation Act (FICA);
      - 2) Federal Unemployment Tax Act (FUTA); and
      - 3) State Unemployment Compensation Act (SUCA).
      - 4) Only bona fide employee fringe benefits that accrue to the direct benefit of the employee (such as pension and annuity, health and welfare, vacation apprenticeship, and training funds) shall be included in the calculation of the weighted wage rate. Other fringe benefits that are not a direct benefit of the employee (such as union promotion funds) shall be paid as part of the markups allowed on the work.
    - b. Travel Allowance or Subsistence: The Contractor shall be reimbursed the actual costs of travel and subsistence allowances paid to laborers engaged upon the Work when such allowances are required by the terms of employment for such laborers.
    - c. Industrial Insurance and Medical Aid Premiums: The Contractor shall receive reimbursement for Marine Industrial Insurance, State of Washington Industrial Insurance and Medical Aid premiums that become an obligation of the Contractor and are chargeable to the labor performed on the work to be paid for on a Force Account basis. The rate of

compensation for the above premiums shall be a composite rate based upon the full premium for Industrial Insurance and one-half the premium for Medical Aid, which premiums are prescribed by the regulatory body for the Contractor, Subcontractor, Sub-subcontractor, or other person actually performing the Force Account work. This composite rate may be adjusted upon request to conform to adjustment prescribed by the regulatory body.

- d. The work may be performed and paid on an overtime basis only if specifically directed or authorized by the Engineer in advance of the work being performed. The Contractor may request that the work be done on overtime if it supports the request with specific reasons for incurring the additional cost of overtime.

2. Materials:

- a. For all materials furnished by the Contractor for the Work, payment shall be made in the amount of the actual invoice cost for such materials, including actual freight and express charges and applicable taxes paid by the Contractor and not already addressed for payment herein, (i.e. B&O tax see Table of Cost Categories and Markup; and see Subparagraph A.7 regarding sales tax.) less all offered or available discounts and rebates, notwithstanding the fact that they may not have been taken by the Contractor. Before work is started, the Engineer may require the Contractor to obtain multiple quotations for the materials to be utilized and select the vendor with prices and terms most advantageous to the Port.
- b. The Contractor shall furnish to the Port, as support for all charges for materials, valid copies of Supplier invoices, including freight and express bills. As to such materials as may be furnished from the Contractor's own inventory for which an invoice is not available, the Contractor shall furnish current cost quote to determine the fair market value of the material. The Contractor may be asked to provide a sworn affidavit certifying its actual cost of such materials.
- c. If the Port determines that the Contractor's cost of such furnished materials is excessive or if the Contractor does not furnish documentary evidence of its costs, the Port reserves the right to establish the cost of all or part of such materials at the lowest current wholesale prices less all applicable discounts and exemptions at which said materials are available in the quantities required to be furnished by the Contract.
- d. The Port reserves the right to furnish such materials to the Contractor as it deems advisable, and the Contractor shall have no claim for any costs, overhead, or profit on such furnished materials.

3. Equipment:

- a. For any machine-power tools or equipment which the Engineer deems necessary for the Contractor to use, payment shall be made for equipment owned or rented by the Contractor in accordance with the rates stated in the current Rental Rate Bluebook as modified by the "AGC/WSDOT Equipment Rental Agreement" in effect at the time such tools or equipment were used, subject to reduction under Subparagraph b below. Any sales tax paid by the Contractor for rental equipment shall also be reimbursed in accordance with Subparagraph 7 below.

- b. The rates stated in the current Rental Rate Bluebook as modified by the "AGC/WSDOT Equipment Rental Agreement," are the maximum rates allowable for equipment of modern design and in good working condition, and include and are full compensation for overhead, profit, bonds and for furnishing all fuel, oil, lubrication, repairs, maintenance, insurance and all other costs incidental to the furnishing of such tools and equipment, except for the labor to operate the same. The stated compensation for use of tools or equipment not of modern design or not in good working conditions shall be reasonably reduced determined by the Engineer. If equipment is required for which a rental rate is not included in the current schedule, an agreed rental rate shall be established for that equipment based upon the most similar model found in the Blue Book of rental rates. Rented Rates for specialty equipment such as dredging equipment and barges not found in the Blue Book shall be established by past or present Port audit using standard accounting procedures. Such rates must be approved by the Engineer prior to use of the equipment on the Force Account Work.
- c. Payment for Standby Time, Shutdown and Breakdowns in equipment shall be paid as prescribed in the "AGC/WSDOT Equipment Rental Agreement".
- d. The Port defines Small Tools and Small Equipment to be any contractor owned piece of equipment with a monthly rental rate of less than \$100 or any piece of equipment with a purchase price of less than \$500. The Port does not incorporate the "AGC/WSDOT Equipment Rental Agreement" section on Small Tools into this contract. The Port does not pay for small tools as a direct cost of the work performed but as a part of the markup allowed on the changed work.
- e. Current rates stated in the current Rental Rate Bluebook as modified by the "AGC/WSDOT Equipment Rental Agreement" are maintained at each district office of the Department of Transportation and at each of the offices of the Associated General Contractors of America.
- f. If the necessary equipment is not already at the site of the project and it is not anticipated that it would be required for the performance of other work under the terms of the Contract, the Contractor will be paid for mobilization in accordance with the terms and conditions specified in the then current Rental Rate Bluebook as modified by the "AGC/WSDOT Equipment Rental Agreement."
- g. For equipment owned by the Contractor that is (1) listed by the Port in the Supplementary Conditions or (2) not listed in the Bluebook, payment shall be made for owned equipment on the basis of Actual Cost. The term Actual Cost means the ownership and operating cost of the equipment as determined by the Port based on records made available by the Contractor. The Port in determining Actual Cost may consider the equipment's acquisition cost, the equipment's useful life, any indirect costs associated with ownership of the equipment, depreciation and other commercially reasonable factors. It is the responsibility of the Contractor to provide cost records to the Port upon request to assist with determining the Actual Cost for the equipment. If the Contractor did not keep and maintain such cost records or fails to comply with the document request made by the Port, the Port may at its option make a reasonable determination of the Actual Cost.

If the Contractor disagrees with this determination, it must file a written Notice of Event and pursue a Request for Change Order as set forth in Paragraphs G-04.34 and G-05.02.

4. Other:
    - a. As shown in the Table of Cost Categories and Markups.
  5. Subcontractors:
    - a. When Work is performed on a Force Account basis by Subcontractors, the subcontractor will be allowed the total cost computed for labor, materials, and equipment as stated above plus markups as indicated in Subparagraph 6 below.
  6. Markups:
    - a. The entity that performs the work shall be reimbursed a markup in an amount equal to twenty percent (20%) of the sum of the Direct Cost items listed above in Subparagraphs 1, 2, 3, and 4 above.
    - b. The Contractor shall also be reimbursed an amount equal to seven percent (7%) of the total Subcontractor amount of Subparagraph 5 above for all costs associated with the subcontracted work; provided, however, in the event the subcontracted Work requires the Contractor, by virtue of where (e.g. separate, distant Project site) or when (e.g. at night when otherwise only day-shift work is being performed or after Substantial Completion) it is performed, requires the Contractor to mobilize significant, additional supervision or equipment not otherwise regularly present on the Project, the Port may consider requests for additional Contractor compensation.
    - c. Subcontractor on Subcontractor markup of five percent (5%) on the respective subcontracted work will be allowed up to two tiers of subcontractor work only. If more than two tiers of subcontractors are involved, the Contractor will allocate the available markup (two tiers at five percent (5%) each) but the Port will not pay more than the two tiers.
  7. Sales Tax. Sales tax shall be paid as otherwise provided in the Contract Documents.
  8. The payments provided above shall be full payment for all work done on a Force Account basis and shall cover all expenses of every nature, kind, and description, including those listed and any others incurred on the work being done.
- B.** No compensation for Work performed on a Force Account basis shall be paid unless the Engineer provided prior written direction to the Contractor to perform the work on such a basis. No work shall be considered to be Force Account work, which can be measured and paid for at a unit price in the Schedule of Prices.
- C.** The amount of Work to be paid for on a Force Account basis shall be documented in writing on a daily basis by the Contractor and the Engineer. The force account work shall be tracked on the Port of Seattle Force Account Form provided by the Engineer. The Contractor shall complete the force account form (including manpower, equipment, materials, change order number or bid item number, project number, description) on a daily basis and submit it within 24 hours to the Inspector (or Engineer) for verification. The Contractor shall maintain records and invoices for all costs associated with the Allowance Work in accordance with the requirements specified in Paragraph G-04.38. If reasonably



subject to question, the Port may require Contractor to certify its Force Account documentation in the same manner as set forth in Paragraph G-09.02.B.8.

- D.** The Contractor shall give notice to the Inspector of Contractor's intent to commence the Force Account work prior to starting the work. Such notice shall be given on a daily basis to alert the Port Inspector of the work being performed for which the Contractor will seek the Port Inspector's verification or certification.
- E.** The Contractor shall give the Port notice when 80% of the amount authorized to be spent on an issue has been expended or as soon as the Contractor is aware that there is not enough funds authorized to complete the work. Application for payment for Work done on a Force Account basis must be submitted with a detailed spreadsheet detailing the work performed no later than thirty (30) days following the performance of the Force Account work.

**G-08.06      EARLY USE; SUBSTANTIAL COMPLETION; PHYSICAL COMPLETION**

- A.** Early Possession or Use of Partially Completed Work. The Port shall have the right to take early possession or use of Partially Completed Work notwithstanding that the Contractor is not yet required to have Substantially Completed the particular portion of the Work. Indeed, this Contract may specifically contemplate the possession or use of portions of the Work (including certain temporary facilities) before Substantial Completion as part of a contemplated sequencing, phasing, or operations plan. Any such early use or possession by the Port shall not be construed as Substantial Completion, Physical Completion or Final Acceptance of the Work and shall not trigger the commencement of any warranty provisions under this Contract (or as may additionally be provided by manufacturers) unless specifically provided otherwise by the Contract.
  - 1. If the Port elects to take early use or possession of any Partially Completed Work, the Port will, unless otherwise provided in the Contract Documents, be responsible for costs to operate such Partially Completed Work but only for the period of use. The Port shall not, however, be responsible for the costs to operate any temporary facilities required by the terms of the Contract, even if the Port or its tenants may be said to have the use of or benefit from such temporary facilities.
  - 2. If the Port elects to take early use or possession of any Partially Completed Work, the Contractor will, unless otherwise provided in the Contract Documents, be responsible for costs to maintain and repair such Partially Completed Work for the period of use; provided, however, that if the Port or a tenant of the Port damages the Partially Completed Work, the Contractor will repair or replace the negatively affected portion at the Port's cost.
  - 3. If such early use or possession by the Port increases the cost or delays the completion of remaining portions of the Work for which Contractor seeks payment or additional time, the Contractor shall notify the Port in writing as required by Paragraphs G-04.34 and G-05.02. Absolutely no such request will be considered for any use or possession specifically contemplated by the Contract Documents.
- B.** Punchlist Process. The Punchlist process is split into three distinct steps: (1) Contractor Punchlist, (2) Punchlist Inspection, (3) Punchlist Backcheck.
  - 1. Contractor Punchlist Development: Upon Substantial Completion of the Work, the Contractor shall prepare a Punchlist of all incomplete or corrective items related to the Work. The Contractor shall complete and correct open items. When the

Contractor believes that all of the incomplete or corrective items on the Punchlist are complete, with only minor requirements of the Contract remaining (e.g. final As-Built Drawings, landscaping, and minor deficiencies in the Work requiring correction), it shall submit a copy of its Punchlist along with a Request for Punchlist Inspection to the Engineer at least seven (7) days in advance of the date requested for Punchlist Inspection.

2. **Punchlist Inspection:** The Engineer will review the Contractor's Punchlist and the Work to determine the readiness to begin the Punchlist Inspection. If the Contractor Punchlist appears complete, and the Engineer believes that no more than 10% by number of additional items will need to be added to the Punchlist by the Engineer, the Engineer will perform a Punchlist Inspection of the Work, and develop and deliver a consolidated Punchlist to the Contractor for corrections. If the Engineer believes that there is a significant number of incomplete Work items, the Engineer will notify the Contractor in writing that the Contractor is not ready for the Punchlist inspection and provide the reasons. The Contractor shall proceed to complete the items as needed prior to a subsequent request to the Engineer for a Punchlist Inspection. A completed Punchlist Inspection is specifically required for Substantial Completion.
    - a. If the Contractor does not expeditiously proceed with correction and completion of items identified in the Punchlist Inspection, the Engineer may, in his/her sole discretion upon three (3) days prior notice to Contractor, delete the uncompleted or uncorrected work from the Contract by Change Order. In such instance, the Port may choose to (1) have the work performed by another contractor with the cost of such work to be deducted from the amount due the Contractor, or (2) issue a deductive Change Order for the uncompleted or uncorrected work. The rights provided the Port under this Paragraph shall not relieve the Contractor of its responsibilities as required under any other provisions of this Contract.
    - b. Failure of the Engineer to include items on the Punchlist does not alter the Contractor's responsibility to complete all Work in accordance with the Contract Documents. The Engineer may revise the Punchlist at any time prior to Physical Completion when items needing completion or correction are discovered.
  3. **Punchlist Backcheck:** When the Contractor considers work on the Punchlist to be complete, the Contractor shall request that the Engineer schedule and conduct Punchlist Backcheck to complete the Punchlist process. The Contractor shall request the Punchlist Backcheck at least seven (7) days in advance of the date requested for the Punchlist Backcheck. A completed Punchlist Backcheck is specifically required for Physical Completion.
- C. Substantial Completion.** At the Contractor's request (or as determined by the Port even in the absence of such a request), the Port will conduct the Punchlist Inspection to determine whether the Work is Substantially Complete. The Port will not generally consider a request from the Contractor to consider any portion of the Work for Partial Substantial Completion unless set forth in the Contract Documents. If upon such Punchlist Inspection and review of all required documents, the Port determines that the Contractor has in fact achieved Substantial Completion, the Engineer will issue a formal Notice of Substantial Completion.

1. After Substantial Completion, the Port will be responsible for the costs to operate, maintain and repair the Work unless it is Non-Conforming Work or otherwise provided in the Contract Documents.
2. Notwithstanding the foregoing, if Contractor has otherwise attained Substantial Completion except for (i) accepted Operating and Maintenance Documentation for all of the Work, (ii) accepted Warranty Documentation for all of the Work, or (iii) required training for all of the Work, the Port at its sole option may nonetheless declare Substantial Completion and add these tasks, to the extent not yet completed, to the Punchlist. If the Port exercises this option, then:
  - a. For purposes of the assessment of any Liquidated Damages tied to Substantial Completion, the Contractor will nonetheless be deemed to have achieved Substantial Completion;
  - b. The Contractor will, notwithstanding Subparagraph A.1 above, be responsible to operate, maintain and repair all portions of the Work for which the Contractor has not completed all of these tasks until such time as they are completed to the degree otherwise required for Substantial Completion; and
  - c. The warranties for any portion of the Work for which the Contractor has not completed all of these tasks will not commence to run until such time as they are completed to the degree otherwise required for Substantial Completion. This will specifically be reflected in any documentation reflecting the Warranty Start Date.

If Contractor fails or refuses to perform and pay for all such maintenance, operation and repair, the Port may at its option perform or pay for such services, and withhold sums otherwise due Contractor for reimbursement of such costs. The Contract Documents may, in some instances, specifically set forth the expected cost for such services.

- D.** Physical Completion. At the Contractor's request (or as determined by the Port even in the absence of such a request), the Port will conduct the Punchlist Backcheck to determine whether the Work is Physically Complete. If upon such Punchlist Backcheck and review of all required documents, the Port determines that the Contractor has in fact achieved Physical Completion, the Engineer will issue a formal Notice of Physical Completion.

#### **G-08.07 FINAL PAYMENT**

- A.** The Port will make Final Payment, excluding held retention, to the Contractor following (1) Physical Completion and (2) final resolution by settlement, mediation or litigation of all Requests for Change Orders or Claims. Final Payment shall include the entire sum found to be due hereunder after deducting therefrom such amounts as the terms of the Contract permit. Prior estimates and payments, including those relating to unit price work, extra work or work omitted, shall be subject to review and correction by the Final Payment. Final Payment will be made only for materials actually incorporated in the Work; and, all unincorporated materials remaining for which Progress Payments have been made shall, unless otherwise agreed, revert to the Contractor and any Progress Payments made for these items shall be deducted from the Final Payment for the Work.
- B.** By accepting Final Payment, the Contractor shall be deemed thereby to have released the Port from all claims of Contractor and all liability to the Contractor for things done or furnished in connection with the Work and for every act and neglect of the Port and others

relating to or arising out of the Work, other than release and held retention. Final Payment by the Port shall not release the Contractor or its Surety from any obligation under the Contract or under the performance and payment Bonds or under any warranty obligations.

#### **G-08.08 FINAL ACCEPTANCE**

Following issuance of the Notice of Physical Completion and the completion of all the Closeout Administrative Requirements, the Port will formally accept the Project. Once the Port determines that the Contractor has fulfilled these requirements, the Engineer will issue a formal Memorandum of Final Acceptance.

#### **G-08.09 RELEASE OF RETAINAGE**

- A.** Promptly following Final Acceptance, the Port will prepare the Notice of Completion of Public Works Contract and submit it to the relevant Washington State agencies.
- B.** Release of the retainage will be made no sooner than sixty (60) days after issuing the Notice of Completion of a Public Works Contract provided the following conditions are met:
  - 1. On Contracts totaling more than \$35,000, a release has been obtained from the Washington State Department of Revenue (RCW 60.28.051);
  - 2. Receipt of a certificate of Payment of Contributions Penalties and Interest on Public Works Contract from the Washington State Employment Security Department;
  - 3. Receipt of a certificate from Washington State Department of Labor and Industries showing the Contractor is current with payments of industrial insurance and medical aid premiums;
  - 4. All claims, as provided by law, filed against the retainage have been resolved. In the event claims are filed and provided the conditions of 1 through 3 above are met, the Contractor will be paid such retained percentage less an amount sufficient to pay any such claims together with a sum determined by the Port sufficient to pay the cost of foreclosing on claims and to cover attorney's fees.
- C.** It is the responsibility and a condition of this Contract that Contractor promptly notifies all Subcontractors and Suppliers of the commencement of the period and of the final day for submitting any liens. As a further condition of this Contract the Contractor is required to place within all subcontracts a clause that states that this shall be done. The Contractor shall by letter inform the Port of the compliance with this provision. Failure of the Contractor to comply with this provision may be used by the Port as a basis to withhold retainage to ensure payment to uninformed Subcontractors. Failure to comply will also be made a matter of record for future determinations of bidder responsibility

#### **G-08.10 CERTIFICATE OF CONTRACT COMPLETION**

Following issuance of the Memorandum of Final Acceptance, payment of the Final Payment, consumption (in payment of claims) or release of the full amount of the retainage and satisfaction of the Contract's requirement (if any) for the Contractor to maintain completed-operations insurance coverage for the completed Work, the Port will issue a Certificate of Contract Completion.

**G-08.11 PAYMENTS DO NOT RELIEVE CONTRACTOR FROM RESPONSIBILITY FOR WORK**

The Port's actions in making any Progress Payment or Final Payment, in issuing the Notice of Substantial Completion, the Notice of Physical Completion, the Memorandum of Final Acceptance, the Notice of Completion of Public Works Contract or the Certificate of Contract Completion, and in releasing the retainage do not in any way relieve the Contractor from its responsibility for the Work or its responsibility to repair, replace, or otherwise make good Non-Conforming Work. Nor do any of these actions constitute a waiver of the Port's right to reject Non-Conforming Work or any other rights. Without limiting the generality of the foregoing, the Port shall have the right to seek reimbursement of any amount it determines was overpaid to the Contractor and to recover damages for any unauthorized or Non-Conforming Work.

**TABLE OF COST CATEGORIES AND MARKUPS**

Direct Costs				20% Entity that performs Work	7% Contractor on Sub	5% Sub on Sub two tiers max
Labor	Material	Equipment	Other			
All Craft	Scope Changes	Large Equipment and Large Tools	Added Shop Drawings	As-Built Drawings	GC Management of Sub	Management of Sub
Working Foremen (Not in OH)	Special Warranties	Rental Equipment	Reproduction	<u>Project Staff</u> Foreman (Non-Working) Supervision/Superintendent	Supervision	Supervision
Working General Foremen (not in OH)	Freight	Temporary Fence	Dump Fees	Administration	Home Office Overhead	Home Office Overhead
Labor Burden	Special Clothing	Barricades	Design	Project Manager	Field Office Overhead	Field Office Overhead
Field Engineering Layout / Surveying	Testing	Walkways		Project Engineer (unless Design)	Profit	Profit
Clean Up (not in rates /Hrs or OH)	Signs	Dumpsters		Estimating	Administration Cost	Administration Cost
Traffic Control (not in OH)	Access Roads	Safety Equipment (not PPE)		Contract Administration	B&O Tax	B&O Tax
Escalation		Temporary Heat		Office Engineering	Insurance	Insurance
Overtime Premium		Temporary Light		General Foreman (portion not in directs)	Bond	Bond
		Temporary Power			Incidentals	Incidentals
		Pumping		Small Tools and Equipment	General Conditions	General Conditions
		Hoisting		Insurance	Fee	Fee
				Home Office Overhead	General & administrative	General & administrative
				Field Office Overhead	Vehicles	Vehicles
				Bond	Safety	Safety
				Profit	Coordination drawings	Coordination drawings
				Permit		

**DIVISION 0 - BIDDING REQUIREMENTS, CONTRACT FORMS AND CONDITIONS OF THE CONTRACT**  
**Document 00 70 00 - General Conditions**

<p><b>OH = Overhead</b></p>	<p>B&amp;O Tax</p> <p>Warrantee (unless special)</p> <p>Schedule Updates</p> <p>Personal Safety Gear (PPE)</p> <p>Transportation</p> <p>Badging and keys</p> <p>Consumables</p> <p>Incidentals</p> <p>General Conditions</p> <p>Fee</p> <p>General &amp; administrative</p> <p>Red lines</p> <p>Vehicles for Project Staff</p> <p>Safety</p> <p>PLA</p> <p>Coordination drawings</p>			
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NOTE: The above is the total markups allowed. It shall be the responsibility of the Contractor for determining with its Subcontractors, the allocation of the overall markup amounts.

## **ARTICLE G-09**

### **CLAIMS**

#### **G-09.01 TIME FOR FILING CLAIMS**

- A.** The following action is a mandatory condition precedent to filing a Claim under the Contract: a Request for Change Order is denied or deemed denied by the Port.
- B.** Unless otherwise agreed in writing by the Engineer, the fully documented Claim shall be received by the Engineer within thirty (30) days after the denial (or the deemed denial) of a Request for Change Order.
- C.** Failure to comply with the time requirements set for filing the Claim shall constitute acceptance by the Contractor, on behalf of itself and its Subcontractors and Suppliers, of the Port's denial or deemed denial of a Request for Change Order. Such acceptance shall be considered complete, full and final settlement of all costs, damages and Claims related to or arising from the Request for Change Order.

#### **G-09.02 CLAIM RESOLUTION**

- A.** The parties shall enter into the Claim resolution process in good faith and not use the Claim resolution processes for purposes other than resolving a good faith dispute. At all times during the course of the Claim, the Contractor agrees to continue to perform the Work with due diligence, unless a stop work order under Paragraph G-10.03 has been issued by the Port. Both parties have a duty to take all reasonable steps necessary to mitigate losses resulting from the Claim whether those losses are their own or another party's losses.
- B.** Every Claim must be submitted by the Contractor in writing and clearly designated by the Contractor as a fully documented Claim. At a minimum, a fully documented Claim must contain the following information:
  - 1. A detailed factual statement of the Claim for additional compensation and time, if any, providing all necessary dates, locations and items of Work affected by the Claim;
  - 2. The date on which facts arose which gave rise to the Claim;
  - 3. The name of each employee of the Port or A/E knowledgeable about the Claim;
  - 4. The specific provisions of the Contract Documents which support the Claim;
  - 5. Identification and copies of any documents that support the Claim;
  - 6. If an extension in the Contract Time is sought, the specific days and dates for which it is sought; the specific reasons Contractor believes an extension in the Contract Time should be granted; and Contractor's analysis of its Schedule to demonstrate the reason for the extension in Contract Time (Time Impact Analysis);
  - 7. If an adjustment in the Contract Sum is sought, the exact amount sought and a breakdown of that amount into the categories composed of labor, material, equipment, job overhead, general and administrative overhead (if any), subcontractor claims and other categories may be specified by the Port, and
  - 8. A notarized statement certifying, under penalty of perjury, that the Claim is made in good faith, that the supporting cost and pricing data have been incurred, are true



and accurate to the best of Contractor's knowledge and belief, that the Claim is fully supported by the accompanying data, and that the amount requested accurately reflects the adjustment in the Contract Sum or Contract Time for which Contractor believes the Port is liable. The individual signing such certification shall be a duly authorized representative of the Contractor who has the necessary and appropriate authority and responsibility to commit the Contractor to the truthfulness of the certification.

9. A statement that the Claim covers all changes in cost and in time (direct, indirect, impact, consequential, and otherwise) to which the Contractor (and Subcontractors and Suppliers of any tier) is entitled.

In the event that the Contractor is submitting a Claim asserted on behalf of Subcontractor, Sub-Subcontractor, or Supplier, Contractor shall specifically review the Claim documentation provided by the Subcontractor, Sub-Subcontractor, or Supplier to ensure that it fully complies with the requirements of this Paragraph.

- C. The Contractor must demonstrate that an impact has occurred, and it has been hurt due to this impact, through such means as, schedule analysis, cause/effect analysis, impact analysis, etc. and provide documentation that clearly points to the Port as the responsible party for the impact. Use of inefficiency studies, such as Hanna, MCAA, Leonard, and the like, are not sufficient, of and by themselves, to demonstrate or establish entitlement or quantum for a claim, and will not be accepted by the Port as the sole documentation of impact. The Contractor must demonstrate that application of a particular inefficiency study, if used, is appropriate and applicable to the circumstances of their claim (for example, use of MCAA for demolition work may not be applicable). Also refer to Paragraph G-05.02.F (Impact to Unchanged Work).
- D. The Port has the right to recover its analysis/administration cost of processing and evaluating a Claim for that portion of the Claim that is determined, in light of the final resolution, to be unfounded or unsupported. The cost of reimbursement will be the percentage of the original Claim that is determined to be unsupported times the cost of analysis/administration.
- E. Provided the Claim is submitted within the time period identified in Paragraph G-09.01 and contains the information and documentation required in this Paragraph G-09.02, the Claim will be reviewed and processed in accordance with Paragraph G-09.02.F.
- F. Dispute Resolution Process
  1. Level 1. Within fourteen (14) days of receipt of the Claim by the Port, the Port and Contractor shall establish a schedule for evaluating and resolving the Claim. The first step in this process will be a meeting between the General Manager for the Contractor and the Construction Manager for the Port. At this meeting, the Port and the Contractor shall be jointly briefed by both the Port and Contractor representatives primarily responsible for the preparation of the subject Request for Change Order and its denial by the Port. If the Contractor representative presents significant new information that was not brought to the attention of the Port during the Request for Change Order process, the Port may at its option suspend the Level 1 process and return the matter to the Resident Engineer for consideration. The Port shall have the right to request additional information from the Contractor and its Subcontractors or Suppliers at any time prior to or during the Level 1 meeting. If an adjustment to the meeting schedule is necessary to accommodate such requests for additional information, such adjustment shall be as mutually

agreed by the representatives. Failure to provide requested information will delay the elevation process and will be treated as an admission that supporting documentation does not exist. The Port will issue a Change Order for the resolved portions of the Claim. Following the Level 1 meetings, the Port will issue findings and provide them to the Contractor. If the Contractor does not agree with the findings of the Level 1 process, it must submit a written rebuttal addressing each point of disagreement, and citing the specific documentation supporting its opinion. This rebuttal must be received by the Port within 30 days of the Level 1 findings or the claim will be deemed abandoned. Within 14 days of receipt of the Contractor's rebuttal, the Port will (i) request a further meeting (ii) issued revised findings or (iii) re-affirm its previous findings. The Contractor may not proceed to the Level 2 process until the Level 1 process has been exhausted.

2. Level 2: If the Level 1 process has been fully exhausted without achieving a mutually acceptable resolution, the Contractor may initiate the Level 2 process. The owner or corporate officer of the Contractor (who did not attend the Level 1 meetings) and the Port's Assistant Director of Engineering Services, Construction Services shall be jointly briefed by both the Port and Contractor Level 1 representatives on the results of the Level 1 meeting, their respective positions, and remaining areas of disagreement. If the Contractor representative presents significant new information that was not brought to the attention of the Port during the Level 1 process, the Port may at its option suspend the Level 2 process and return the matter to the Construction Manager of the Port for further Level 1 consideration. Otherwise, the Port and Contractor Level 2 representatives shall establish a schedule for attempting to resolve the Claim. The Port shall have the right to request additional information from the Contractor and its Subcontractors and Suppliers at any time prior to or during the Level 2 meeting. If an adjustment to the Level 2 meeting schedule is necessary to accommodate such requests for additional information, such adjustment shall be as mutually agreed by the representatives. Failure to provide requested information will delay the elevation process and will be treated as an admission that supporting documentation does not exist. The Port will issue a Change Order for the resolved portions of the Claim. The Port will make findings after the Level 2 meetings and provide them to the Contractor. If the Contractor does not agree with the findings of the Level 2 process, it must submit a written rebuttal addressing each point of disagreement, and citing the specific documentation supporting its opinion. This rebuttal must be received by the Port within 30 days of the Level 2 findings or the Claim will be deemed abandoned. Within 14 days of receipt of the Contractor's rebuttal, the Port will (i) request a further meeting (ii) issued revised findings or (iii) re-affirm its previous findings. The Contractor may not proceed to with the next step of the Claim resolution process unless the Level 2 process has been fully exhausted.
3. Mediation. If the Claim is not resolved in the Level 2 process, the Contractor may bring no claim against the Port in litigation unless the claim is first subject to mediation. In the absence of agreement to the contrary, the mediation shall be conducted before a single mediator under the Voluntary Construction Mediation Rules of the American Arbitration Association. The parties shall schedule mediation sessions at the earliest possible date(s), subject to the schedule of the selected (or appointed) mediator. The parties shall cooperate with the mediator and assure timely and full access to such personnel and documents as the mediator may request. The costs of mediation shall be equally divided between the parties.

4. Dispute Resolution Board (DRB). The Supplementary Conditions will define whether and when a DRB is to be used. If used, the DRB (i) does not waive the separate mediation requirement in Paragraph G-09.02.F.3 and (ii) can be inserted by mutual agreement of the parties at any point during the resolution process. If agreement on the timing of the DRB cannot be reached or is not otherwise specified in the Contract Documents, the Port will determine when to utilize the DRB.
- G. Exhaustion of Remedies; Litigation. The Contractor may bring no litigation on Claims unless such Claims have been properly raised and considered in the procedures above. All unresolved Claims of the Contractor shall be waived and released unless the Contractor has strictly complied with the time limits of the Contract Documents, and a lawsuit is served and filed within the limits stated in Paragraph G-04.35. This requirement cannot be waived except by an explicit written waiver signed by the Port.

## **ARTICLE G-10**

### **PORT OF SEATTLE'S RIGHTS AND REMEDIES, SUSPENSION AND TERMINATION**

#### **G-10.01 GENERAL**

- A. The rights and remedies afforded the Port by this Contract are to be considered as cumulative and are in addition to and not in limitation of any rights and remedies otherwise available to the Port under law. The pursuit of any remedy by the Port shall not be construed to bar the Port from the pursuit of any other remedy in the event of similar, different, or subsequent breaches of this Contract.
- B. The rights reserved or possessed by the Port to take any action with respect to the Project shall not give rise to any duty on the part of the Port to exercise any such right for the benefit of the Contractor, Subcontractor, Sub-subcontractor, Supplier, or any other person.
- C. The Contract shall not be assigned in whole or in part by the Contractor without the prior consent of the Port. To the maximum extent permitted by law, involuntary assignment of the Contract caused by the Contractor being adjudged bankrupt, assignment of the Contract for the benefit of the Contractor's creditors, or appointment of a receiver on account of the Contractor's insolvency shall be considered as a failure to comply with the provisions of the Contract and subject to the termination provisions contained herein.

#### **G-10.02 NO WAIVER OF PORT'S RIGHTS**

- A. No action, delay in acting, or failure to act by the Port shall constitute a waiver of any right or remedy of the Port or be held to reduce any amount owed to the Port by the Contractor. Nor shall such action, delay, or failure to act constitute an approval or acquiescence in any breach or defect in Work, materials, or equipment. Likewise, delay or failure of the Port to act upon or enforce any provision of this Contract shall not constitute a waiver of such provision or otherwise prejudice the right of the Port to enforce such provision at any subsequent time. No provision of this Contract shall be held to be waived, modified, or deleted except as expressly stated in a Change Order.
- B. The Port shall not be precluded or estopped by any measurement, estimate, or certificate made either before or after the Substantial Completion, Physical Completion or Final Acceptance of the Work and payment therefore from showing the true amount and

character of the Work performed and materials furnished by the Contractor, or from showing that any such measurement, estimate or certificate is untrue or was incorrectly made, or that the Work or materials do not conform in fact to the requirements of the Contract.

- C.** Neither the inspection, measurement, estimate, certificate, Substantial Completion, Physical Completion, Final Acceptance, nor any payment for the whole or any part of the Work, nor any extension of time, nor any possession or use of the Work taken or made by the Port, shall operate as a waiver by the Port of any provision of the Contract or of any rights, remedies, or damages herein provided for, or bar recovery of any money wrongfully or erroneously paid to the Contractor.

**G-10.03 PORT'S RIGHT TO STOP THE WORK FOR CONTRACTOR NON-PERFORMANCE**

- A.** If the Contractor fails to perform the Work in accordance with the Contract Documents, fails to correct Non-Conforming Work as required by Paragraph G-04.24, or fails to comply with any requirement of the Contract, the Port may order, in writing, except for stoppages related to safety or security which may be issued orally, that the Contractor stop all or any portion of the Work until the cause for such order is eliminated.
- B.** In the event of an order to stop Work arising from any such failure, the Contractor shall not be entitled to any increase in the Contract Time or Contract Sum, nor to any damages or relief from liability, on account of such order to stop work.

**G-10.04 PORT'S RIGHT TO SUSPEND WORK**

- A.** The Engineer may direct the Contractor in writing to suspend all or any part of the Work for such period of time as it may determine to be appropriate for the convenience of the Port. The Contractor shall, subject only to protecting the Work as may either be directed by the Port or required under G-04.25.C., immediately comply with such directive. The Contractor shall resume the suspended Work when so directed by the Engineer.
- B.** If the performance of all or any part of the Work is suspended for an unreasonable period of time (1) by an act of the Port in the administration of this Contract, or (2) by the Port's failure to act within the time specified in this Contract (or within a reasonable time if not specified), the Contractor may be entitled to an adjustment in the Contract Sum or Contract Time, provided that:
1. The Contractor submits a Notice of Event and Request for Change Order in accordance with the requirements of the Contract Documents;
  2. The Port directive results in an increase in the time required for, or in Contractor's cost properly allocable to, the performance of any part of this Contract; and
  3. The Port directive was not caused by Contractor's default or other act or omission within the control or responsibility of Contractor.

However, no adjustment shall be made under this clause for any suspension, deferral, or interruption to the extent that performance would otherwise have been impacted by any other cause, including the fault or negligence of the Contractor, or for which an equitable adjustment is provided for or excluded under any other term or condition of this Contract.

- C.** The Contractor may be entitled to recovery unabsorbed home office overhead, but only in the event of a suspension in which all or substantially all of the work is stopped. The Contractor must, in any event, comply with Paragraphs G-04.34 and G-05.02. It is the

Contractor's responsibility to demonstrate that a suspension decreased its stream of direct costs against which to assess a percentage of home office overhead for reimbursement, and the Contractor could not reassign workers to other work, or pursue (e.g. bid, negotiate) other work as a replacement for that Work which is suspended. The burden of proof for not being able to reassign workers or pursue replacement work rests with the Contractor. The following, non-exclusive list of items may never be recovered in home office overhead:

1. Legal fees
2. Advertising, promotional, and marketing cost
3. Travel expenses
4. Penalty fees such as, late charges, tax penalties, bad debt cost, etc.
5. Personal expenses
6. Direct cost
7. Field overhead cost
8. Small tools (that portion not covered in change order markup can be claimed)

#### **G-10.05 PORT'S RIGHT TO PERFORM THE WORK ITSELF**

If the Contractor fails to perform all or any portion of the Work in accordance with the Contract Documents or fails to correct Non-Conforming Work, the Port, without prejudice to any other rights it may have, may correct the failure using its own or other work forces, and issue a Change Order to deduct from the Contract Sum the cost incurred by the Port in taking the corrective action (including all additional administrative costs incurred by the Port in doing so).

#### **G-10.06 PORT'S RIGHT TO PERFORM DISPUTED WORK**

If a dispute arises between the Contractor and separate contractors retained by the Port to perform work on or about the Project Site as to their respective responsibility for performance of any Work or either, including cleaning up as required by the Contract Documents of either, for accomplishing coordination or doing required cutting, filling, excavating or patching as required by the Contract Documents of either, the Port may carry out such work and charge the cost thereof to the Contractor and other contractors responsible therefore as the Port shall determine to be just.

#### **G-10.07 PORT'S RIGHT TO WITHHOLD PAYMENT**

- A. The Port has the right to withhold payment otherwise due the Contractor if and so long as the Contractor does not meet any of its obligations under this Contract. The Engineer will notify the Contractor of the reasons for any amounts withheld and the remedy required.
- B. The Contractor shall be paid monies earned by fulfilling its responsibilities under this Contract, less the 5 percent retention required by 60.28.011 RCW. Monies shall not be considered earned if any of the following conditions applies:
  1. The Work for which the Contractor is claiming payment was not performed in accordance with the Contract;
  2. The Contractor's pay request does not contain the required documentation or is otherwise not in conformance with the requirements of this Contract;

3. There is a good faith dispute over all or a portion of the amount due, in accordance with 39.04.250 RCW;
  4. Failure of the Contractor to make payments owed to Subcontractors, or for labor, materials, or equipment;
  5. Failure of Contractor to submit Schedule(s), Schedule(s) of Value or updated any schedules as required by the Contract;
  6. Failure to prosecute progress of the Work in a timely manner or failure to take necessary steps to regain time or deliver the Work in the prescribed Contract Time;
  7. Failure to comply with Contract safety requirements;
  8. Imposition of any liquidated damages under the Contract; or
  9. Non-Conforming Work.
- C.** In the event the Port withholds all or a part of a payment for deficiencies in either performance, or in a payment request, the Port will notify the Contractor in accordance with RCW 39.76. The Contractor shall have the right to correct all deficiencies that are the basis for the withholding and resubmit the pay request at any time for reconsideration.

#### **G-10.08 TERMINATION FOR DEFAULT**

- A.** The Port may terminate the Contract following written notice to the Contractor and its Surety:
1. If the Contractor disregards the authority of the Port or refuses or fails to prosecute the Work with such diligence as will ensure its completion within the original Contract Time and any extensions of time which may have been granted to the Contractor by Change Order or otherwise;
  2. If the Contractor is bankrupt, insolvent or its financial condition impairs its ability to perform, or if it makes a general assignment for the benefit of creditors, or if the Contractor or a third party files a petition to take advantage of any debtor's act or to reorganize under the bankruptcy or similar laws concerning the Contractor, or if a trustee or receiver is appointed for the Contractor or for any of the Contractor's property on account of the Contractor's insolvency, and the Contractor or its successor in interest does not provide adequate assurance of future performance in accordance with the Contract within ten (10) days of receipt of a request for assurance from the Port;
  3. If the Contractor disregards laws, ordinances, rules, codes, regulations, orders or similar requirements of any public entity having jurisdiction over the Contractor, the Work, or the Project Site;
  4. If the Contractor performs Work which deviates from the Contract, and neglects or refuses to correct rejected Work; or
  5. If the Contractor otherwise violates in any material way any provisions or requirements of the Contract.
- B.** Once the Port determines that sufficient cause exists to terminate the Contract, the Port shall give written notice to the Contractor and its Surety indicating that the Contractor is in breach of the Contract and that the Contractor is to satisfactorily remedy the breach within ten (10) days after the notice is sent. In case of an emergency such as potential damage

to life or property as determined by the Engineer, the response time to remedy the breach after the notice may be shortened. If the remedy does not take place to the satisfaction of the Port within ten-day period, the Engineer may, by serving written notice to the Contractor and Surety either:

1. Transfer the performance of the Work from the Contractor to the Surety; or
  2. Terminate the Contract and at the Port's option prosecute it to completion by Contract or otherwise. Any extra costs or damages to the Port shall be deducted from any money due or coming due to the Contractor under the Contract.
- C.** If the Engineer elects to pursue one remedy, it will not bar the Engineer from pursuing other remedies on the same or subsequent breaches.
- D.** Upon receipt of a notice that the work is being transferred to the Surety, the Surety shall immediately enter upon the premises and take possession of all materials, tools and appliances for the purpose of completing the work included under the Contract and employ by Contract or otherwise any person or persons satisfactory to the Engineer to finish the work and provide the materials without termination of the Contract. Such employment shall not relieve the Surety of its obligations under the Contract and the payment and performance bonds required under the Contract. If there is a transfer to the Surety, payments on estimates covering work subsequent to the transfer shall be made to the extent permitted under law to the Surety or its agency without any right of the Contractor to make any claim.
- E.** If the Engineer terminates the Contract, the Contractor shall not be entitled to receive any further payments on the Contract until all the Work contemplated by the Contract has been fully performed. The Contractor shall bear any extra expenses incurred by the Port in completing the work, including all increased costs for completing the Work, and all damages sustained, or which may be sustained, by the Port by reason of such refusal, neglect, failure, or discontinuance of Work by the Contractor. If liquidated damages are provided in the Contract, the Contractor shall be liable for such liquidated damages until Substantial Completion of the Work, including a reasonable charge for the engineering, managerial and administrative costs incurred by the Port. After all the Work contemplated by the Contract has been completed, the Engineer will calculate the total expenses and damages for the completed Work. If the total expenses and damages are less than any unpaid balance due the Contractor, the excess will be paid by the Port to the Contractor. If the total expenses and damages exceed the unpaid balance, the Contractor and the Surety shall be jointly and severally liable to the Port and shall pay the difference to the Port.
- F.** In exercising the Port's right to prosecute the completion of the Work, the Port shall have the right to exercise its sole discretion as to the manner, method and reasonableness of the costs of completing the Work. In the event the Port takes bids for remedial work or completion of the project, the Contractor shall not be eligible for the award of such contracts.
- G.** In the event the Contract is terminated, the termination shall not affect any rights of the Port against the Contractor. The rights and remedies of the Port under this termination clause are in addition to any other rights and remedies provided by law or under this Contract. Any retention or payment of monies to the Contractor by the Port will not release the Contractor from liability. The clauses of the contract shall remain in full force and effect until completion of the termination proceedings. Warranties, extended warranties, for work completed or partially completed shall continue as though a termination had not occurred.

- H.** If, after notice of termination for Default, it is determined for any reason that the Contractor was not in default under the provisions of the Contract, or that the Contractor was properly entitled to an extension of time under the Changes provisions of the Contract, the rights, obligations, and remedies of the parties shall be the same as if the Contract had been terminated for convenience.

**G-10.09 TERMINATION FOR CONVENIENCE**

- A.** Upon ten (10) days' written notice to the Contractor, the Port may, at its convenience and without cause, terminate all or part of the Contract.
- B.** If the Port terminates the Contract or any portion thereof for convenience, Contractor shall be entitled to be paid for:
1. The Adjusted Contract Work executed in conformance with the Contract and completed prior to the date of the termination set forth in the Port's notice together with the reasonable cost of terminating any agreements for the supply of materials and/or equipment specially ordered for the Project prior to the date of termination; and
  2. Overhead and profit for Adjusted Contract Work actually performed in conformance with the Contract and accepted by the Port prior to the date of termination, at a rate not to exceed the percentage amount set forth in the Contract; and,
  3. The term "Adjusted Contract Work" as used herein means the Contract Work as adjusted by any additive or deductive Change Order executed by the parties or otherwise made effective prior to the effective date of the termination.
- C.** Termination for convenience shall not modify, alter or in any way convert the rights or remedies (if any) of Contractor with respect to any request for revision to the Contract Sum or Contract Time pending at the time of the termination, all of which shall be made in accordance with Paragraphs G-04.34 and G-05.02. Without limiting the foregoing, the termination for convenience shall not convert any such request that is pending into no-fault or assumed liabilities of the Port. Following any termination for convenience, therefore, Contractor's rights or remedies (if any) to any extra compensation, change in the Contract Sum or additional Contract Time for any request pending at the time of termination for convenience shall be continue to be decided in accordance with the same Contract provisions, legal rules, defenses and burdens of proof that would apply but for the termination for convenience.
- D.** Except as provided for herein, the Contractor shall not be entitled to any other costs or damages whatsoever (including without limitation profit and overhead on the terminated Work). The total sum payable upon termination shall not exceed the Contract Sum reduced by prior payments.
- E.** If it appears that the Contractor for any cause or reason would have incurred a loss on the entire Contract had it been completed, the Port shall not reimburse Contractor any profit or overhead for the Adjusted Contract Work completed and shall reduce the settlement to reflect the indicated rate of loss.
- F.** If the payments made by the Port prior to the effective date of the termination exceed the reasonable cost of the Adjusted Contract Work, the Port shall at its option be entitled to a credit for the overpayment. The Contractor shall cooperate with any audit the Port elects to conduct pursuant to the terms of the Contract.



- G.** Title to all Work performed at the time of termination shall be transferred to the Port upon payment therefore. The clauses of the contract shall remain in full force and effect until completion of the termination proceedings. Warranties, extended warranties, for work completed or partially completed shall continue as though a termination had not occurred.

**G-10.10 DAMAGES FOR UNEXCUSED DELAYS BY THE CONTRACTOR**

- A.** The Contractor recognizes that any unexcused delay by the Contractor in the prosecution and completion of the Work will cause inconvenience and expense to the Port, its lessees, and other users of Port facilities. The Contractor further acknowledges that unexcused delays in the prosecution and completion of the Work may obstruct air, water, or other traffic, interfere with and delay business and commerce, or expose the Port to possible claims of direct and consequential damages from third parties. Additionally, such delays may cause the Port to incur substantially increased costs of administration, engineering, supervision and inspection in connection with the completion of the Work.
- B.** It is recognized that it will be impracticable and extremely difficult to ascertain and determine the actual damages, as generally described above, that the Port will suffer as a result of an unexcused delay by the Contractor in achieving a particular Milestone. In such circumstances where specifically provided for in the Supplementary Conditions, the Contractor shall be liable to the Port for liquidated damages, in the amount set forth in the Supplementary Conditions for a particular Milestone, for each day following the contractually required deadline for such Milestone. Neither this Subparagraph nor any amounts specified in the Supplementary Conditions as liquidated damages shall be considered to be a penalty, it being the express agreement of the Contractor and the Port that the liquidated damages provided shall be a reasonable approximation of actual damages to be suffered by the Port in the event of an unexcused delay.
- C.** The liquidated damages amount shall be deducted from any monies due or coming due to the Contractor and shall be the Port's exclusive monetary remedy for the specific, stated Milestone delay for which such liquidated damages are assessed. However, the liquidated damages are designed to compensate the Port only for the specific, stated delay, shall not in any way release the Contractor from any further or other obligation and liability with respect to Contractor's performance of the Contract, and do not preclude or reduce the Port's legal right to pursue other remedies related to or arising out of the delay for which liquidated damages are assessed. Without limiting the generality of the foregoing, any stated liquidated damages specifically shall not limit the Port's ability to perform work, withhold payment and/or terminate for default as provided in Paragraphs G-10.05, G-10.07 and G-10.08 and, in the event of any termination for default, the Port's monetary remedy includes (in addition to the continued assessment of liquidated damages) all excess costs of re-procurement and completion.
- D.** If the Supplementary Conditions do not provide for liquidated damages (as provided in Subparagraph B of this Paragraph), the Contractor shall be subject to liability for the actual damages (including but not limited to the items set forth in Subparagraph A) suffered by the Port as a result of unexcused delays in the Substantial Completion, Physical Completion, or any other Milestone associated with the Work.

## **ARTICLE G-11**

### **BONDS AND INSURANCE**

#### **G-11.01      PERFORMANCE BOND**

The Contractor shall furnish a duly executed Performance Bond upon a form furnished by the Port within ten (10) days following receipt of the Notice of Intent To Award. The bond shall be executed by a surety or sureties who are acceptable to the Port and must appear on the Treasury Department's most current list (Circular 570 as amended), have an underwriting limitation of not less than the Contract total, and be authorized to transact business in the State of Washington. In addition, the surety or sureties must be rated "A-, FSC (6)", or higher by A.M. Best Rating Guide. The penal amount of the bond shall be in an amount equal to the Contract Sum and conditioned upon the faithful performance of the Contract by the Contractor within the Contract Time.

#### **G-11.02      PAYMENT BOND**

The Contractor shall also furnish a duly executed Payment Bond upon a form furnished by the Port, within ten (10) days following receipt of the Notice of Intent To Award. The bond shall be executed by a surety or sureties who are acceptable to the Port and must appear on the Treasury Department's most current list (Circular 570 as amended), have an underwriting limitation of not less than the Contract total, and be authorized to transact business in the State of Washington. In addition, the surety or sureties must be rated "A-, FSC (6)", or higher by A.M. Best Rating Guide. The penal amount of the bond shall be in an amount equal to the Contract Sum and conditioned upon the payment by the Contractor to all laborers, mechanics, Subcontractors, materialmen and all persons who shall supply the Contractor, Subcontractors or Sub-Subcontractors with provisions, equipment, or supplies for the performance of the Work covered by this Contract.

#### **G-11.03      FAILURE TO PROVIDE BONDS**

- A.** Failure to provide timely Performance and Payment Bonds will result in Non-Award and forfeiture of any Bid bond or Security to the Port.
- B.** The Port may, from time to time, require the Contractor's Surety (or Sureties) to appear and qualify themselves upon the bonds. If such Surety (or Sureties) refuse or fail to so appear and qualify, or if the Port determines that such Surety (or Sureties) are insufficient to fulfill the terms and conditions of the bonds, then the Port shall require the Contractor to furnish additional Surety (or Sureties) as may be necessary to fulfill the terms and conditions of the bonds.
- C.** If the Contract Sum is increased by Change Order, the Contractor agrees to provide the Port with such additional Performance and Payment Bonds as required to assure performance of any additional Work and payment for the labor and materials incidental to such Work.

#### **G-11.04      CONTRACTOR LIABILITY INSURANCE**

- A.** Within ten (10) days after receipt of the Notice of Intent to Award, Contractor shall provide liability insurance as specified in the Supplementary Conditions. All such insurance shall be kept in force until Final Acceptance or longer to the extent so required by the Contract.
- B.** The insurance requirements shall specifically apply to any Subcontractors and Sub-Subcontractors (of any tier), and Contractor shall specifically require such coverage under the terms of any Subcontract entered for completion of any portion of the Work.

- C.** No Limitation of Liability. The limits of insurance required in this Contract or as carried by Contractor shall not limit the liability of Contractor nor relieve Contractor of any obligation hereunder. Any specified limits of insurance shall not be construed as to relieve the Contractor from liability in excess of the limits. The minimum limits indicated are not a representation or warranty that the Port has assessed the risks that may be applicable to the Contractor under this Contract.
- D.** Other Insurance. The insurance required within this Contract may not fully cover the Contractor for any indemnity obligations the Contractor may have to the Port or others. It is Contractor's obligation to review the scope of the Contract with Contractor's insurance agent or broker to address coverage needs for Contractor. The Port reserves the right to modify and add insurance requirements if the scope of the Contract changes during the course of construction and/or if the Contract is amended or extended beyond original agreed upon completion date.
- E.** Contractor is fully responsible for providing evidence of current compliance with the Revised Code of Washington, Title 51 Industrial Insurance for Contractor and all subcontractors. Contractor shall submit a current worker's compensation certificate as issued by the Washington Department of Labor and Industries that shows the status of Contractor's worker compensation account prior to commencing work on any portion of the Contract.
- F.** Contractor is fully responsible for ascertaining whether any federal industrial insurance laws apply to this agreement such as from the Federal Employers' Liability Act, the Jones Act, or the United States Longshore and Harbor Workers Compensation Act. Contractor shall comply with all required workers compensation requirements whether through purchase of commercial insurance or as a qualified self insurer relative to federal industrial insurance laws.
- G.** Waiver of Subrogation. Without affecting any other rights or remedies, Contractor (for itself and on behalf of anyone claiming through or under it by way of subrogation or otherwise) hereby waives any rights it may have against the Port, its officers, agents and employees (whether in contract or in tort) on account of any loss or damage occasioned to Contractor arising out of or incident to the perils required to be insured against within the Contract. Accordingly, Contractor shall cause each insurance policy required by Contract to further contain a waiver of subrogation clause. The effect of such release and waiver of the right to recover damages shall not be limited by the amount of insurance carried or required or by any deductibles applicable thereto.
- H.** If the Contractor is required to make corrections to the Work after Final Acceptance, the Contractor shall obtain at its own expense, prior to the commencement of any corrective work, such insurance coverage as is required by Paragraph G-11.04 and the Supplementary Conditions of this contract. Coverage shall be maintained until the corrections to the Work have been accepted by the Port.
- I.** Safety and Abatement of Fire and Other Hazards. Contractor agrees to evaluate and follow up on all recommendations and requirements of Contractor's insurance company as they pertain to safety and loss control while work is being performed under this contract.

#### **G-11.05 PORT PROPERTY INSURANCE**

- A.** The Port maintains annual property insurance that includes course of construction coverage for projects involving both new and existing assets. Unless otherwise specified

in the Supplementary Conditions, this Project is covered under the Port's property insurance policy in effect on the Bid Opening Date. The Port, the Contractor, and all Subcontractors are covered as insureds under this property insurance policy to the extent of their insurable interest in the property that is part of the Project.

- B.** This property insurance covers the Port on an "all-risk" basis, subject to the exclusions and other policy provisions set forth in the actual policy. Terms, limits of insurance, exclusions, and covered perils are specifically subject to review and revision during annual renewal, which occurs on or about July 1. The current policy is available for review and examination by the Contractor and other interested parties at the Port of Seattle.
- C.** Any deductibles and exclusions of the policy that may apply to a given project under construction and for those projects for which the Contractor is considered an "insured" on the policy shall be the responsibility of and for the account of the Contractor. The current deductible for work under construction, defined in the policy as Course of Construction, is \$50,000. If the deductible increases at the annual renewal or otherwise during the course of the Project, the Port shall be responsible for the deductible to the extent (but only to the extent) it exceeds this amount.
- D.** The Contractor may, at its option, elect to purchase additional insurance to cover deductibles, policy exclusions, or non-scheduled projects.
- E.** The property policy, including course of construction coverage, may change as to coverage, limits, exclusions, which property and projects are scheduled for coverage purposes, and who is defined as an "insured" at any time. If any change occurs during the course of the Project that will negatively modify or limit the coverage otherwise available to Contractor on the Bid Opening Date, the Port shall promptly, and in no event more than ten (10) days following the Port learning of any such change, notify the Contractor of such changes.
- F.** By way of description, but not limitation, the insurance provided under this Paragraph does not cover, nor does it relieve the Contractor of liability for, the following types of losses: defective workmanship or materials; damage or loss to Contractor's equipment; liability of the Contractor for personal injury or property damage as set forth elsewhere in this Contract; infidelity of Contractor's employees; and mechanical breakdown. These exclusions are not exhaustive, and the Contractor shall examine the Port's current policy to determine the precise extent of coverage provided under this Paragraph.

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